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Cannabis criminals

*The Social Effects of Punishment
on Drug Users*

by Patricia G. Erickson

ADDICTION RESEARCH FOUNDATION

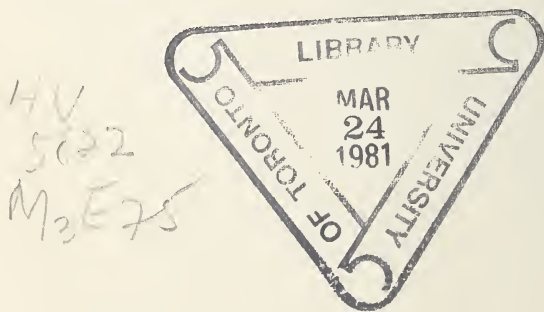
Toronto

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Table of Contents

Foreword by John Hagan

Acknowledgments

List of Tables and Figures

✓ 1. The Problem: A Matter of Debate	1
✓ 2. The Perspective: Theoretical Issues, Legal Context, Model	9
Law and Labeling	
Canadian Drug Law: Its History and Application	
A Model of Criminalization	
✓ 3. Research Methods: The Crime and the Criminal	37
Sample Selection: "First Offenders"	
Representativeness of Sample	
Sample Characteristics	
✓ 4. Becoming a Cannabis Criminal	53
Circumstances of Arrest	
Police Behavior	
Court Appearance	
5. Impact at the Time of Sentence: Period of Official Criminalization	69
Costs	
Benefits	
Summary	
6. Effects One Year Later: Period of Social Criminalization	101
Costs	
Benefits	
Summary	
✓ 7. Implications	139
For the User	
For the Law	
For Society	
Appendices	149
References	159
Author Index	171
Subject Index	173
About the Author	179

Foreword

The law is an imperfect social invention. Indeed, the law produces many social embarrassments that most of us successfully ignore. One of these embarrassments is the role our laws have played in creating what Patricia Erickson calls "cannabis criminals." Erickson has documented the details of this embarrassment in terms it may no longer be possible to ignore.

For example, did you know that by 1976 more than 100,000 Canadians had been designated "criminal" for simple possession of cannabis? Indeed, one out of every eight or nine adults charged with a crime in Canada in recent years has been pursued for their use or abuse of cannabis. Thus, while many of us assume that our attitudes, and therefore our laws, dealing with cannabis are changing, to date the latter has not been the case. Instead, Erickson demonstrates in this volume that the total criminalization for cannabis actually has increased, with increasing numbers of persons going to prison in Canada for cannabis possession. Yet imprisonment represents only the very tip of the "iceberg," and other types of dispositions have increased as well. Erickson reports that the great majority of "cannabis criminals" receive absolute or conditional discharges or fines. Many citizens may wonder why we bother, and Erickson's findings should raise this feeling from curiosity to dismay.

Adopting the sensible standard of the Le Dain Commission, Erickson examines how the costs of criminalizing cannabis offenders in terms of their life experiences compare with the presumed beneficial deterrent effects of a cannabis prohibition. To this end, 95 Canadians sentenced for possession of cannabis were interviewed and their responses analyzed.

The implication of Erickson's findings is a stark indictment of the logic of our cannabis laws. What she finds is that being criminalized for cannabis possession has negative consequences for other aspects of the individuals' lives, but no demonstrable deterrent effect in terms of the individuals' cannabis use. Why, then, have these laws been enforced with such apparent enthusiasm?

Erickson's argument here is provocative, providing what I believe is an important insight more generally into how good legislative intentions can produce bad law enforcement. The problem is that in Canada special police powers of search, the widespread availability of cannabis users, rewards to police for generating large numbers of arrests, and few restrictions on the admissibility of illegally obtained evidence in court all seem to encourage an aggressive seeking out of cannabis offenders. Unfortunately, the burden of the evidence reported in this book is that more problems are created than solved

by this type of law and its enforcement. These findings should be considered carefully by the makers of our drug policy: they provide important guidance for change.

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Particular acknowledgment is due to Lorne Salutin, the senior research assistant for the project, who shared the interviewing with me and was a most diligent "detective" in the follow-up phase. Diverse tasks were ably carried out by Glenn Murray. Secretarial expertise was provided by Linda Cufone, Mary Duarte, and Jean Mitchell.

I owe a special debt of gratitude to Richard Fox, my first mentor in criminology. Our discussions regarding drug laws at an early stage of the project were an extension of much other generous and helpful support over past years.

Ninety-five persons must be thanked collectively and anonymously for their participation in the study. It would not have been possible without their willingness to share not only their experience of going to court but also many other intimate details of their lives.

At the final phase of publication, I was fortunate that the manuscript was in the capable hands of Barbara Rutledge. She devoted great care to the editing, and Donald Murray to the layout and design. The skill and experience of Sylvia Lambert is evident in the preparation of the Index.

Finally, my deepest thanks are extended to Cliff Ottaway, my husband, for being continuously supportive, my best listener, and my most astute critic.

The Addiction Research Foundation funded the undertaking of this inquiry and the data were collected during my employment there from 1973-1977.

For all of the above contributions I am grateful. The interpretations and conclusions, as well as any errors and omissions, however, are my own.

List of Tables and Figures

Table 1	Major Developments in Canada's Drug Laws, 1908-1979
Table 2	➤ Total Convictions for Various Drugs, Canada, 1965-1978
Table 3	Charges and Convictions Involving Cannabis under the Narcotic Control Act, Canada, 1968-1978
Table 4	Sentences Awarded for Simple Possession of Cannabis, Canada, 1967-1978
Table 5	Distribution of Sentences for the Sample and for All Cases in the Sampling Period
Table 6	— Sentence by Personal Attributes
Table 7	Sentence by Legal Attributes
Table 8	Sentence by Judge for Total Cases in Sample Period and for Sample Cases
Table 9	Sense of Criminal Identity as Perceived by Self and Significant Others
Table 10	Perceived Criminality of Various Offenses Relative to Cannabis Possession
Table 11	Perceived Consistency by Sentence, Controlling for Trips to Court
Table 12	Penalties Assigned to Various Offenses
Table 13	Offenders' Perceptions of "Worst Thing" about Whole Experience of Official Criminalization, by Phase of Process and Nature of Reaction
Table 14	➤ Likelihood of Cannabis Use after Court Appearance, by Type of Sanction, Controlling for Past Frequency of Use
Table 15	Likelihood of Cannabis Use after Court Appearance, by Perceived Certainty of Rearrest, Controlling for Past Frequency of Use
Table 16	Perception of Severity of Penalties
Table 17	Expected Sentence Severity in Relation to Actual Sentence
Table 18	Likelihood of Continued Cannabis Use by Actual in

Relation to Expected Sentence Severity, According to
Past Frequency of Use

Table 19	Likelihood of Continued Cannabis Use by Actual in Relation to Expected Sentence Severity, According to Perceived Certainty of Rearrest
Table 20	Perception of Self as Criminal at Time of Court Appearance and One Year Later, According to Sentence
Table 21	Perception of Self as Criminal at Time of Court Appearance and One Year Later, According to Subsequent Charges
Table 22	Perception of Self as Criminal at Time of Court Appearance and One Year Later, According to When Sold Cannabis
Table 23	Changes in Self-Perception of Those Who Did Not Consider Themselves Criminal at Time of Court Appearance, According to Type of Subsequent Charges
Table 24	Changes in Self-Perception of Those Who Did Not Consider Themselves Criminal at Time of Court Appearance, According to Type of Subsequent Criminality
Table 25	Changes in Self-Perception According to Parents' Knowledge of Offense and Reported Perception
Table 26	Parents' Knowledge of Respondents' Cannabis Use in Relation to Time of Charge
Table 27	Parents' Current Attitude to Respondents' Cannabis Use, If They Know, One Year After Court
Table 28	Socioeconomic Status of Respondents and Parents as Reflected in Occupation
Table 29	Position at Time of Trial and One Year Later, According to Sentence
Table 30	Number of Jobs Held in Year Following Court Appearance by Sentence
Table 31	Months of Unemployment Since Court Appearance by Sentence
Table 32	Comparison of Perceived Consistency of Sentence at Time of Trial and One Year Later, According to Actual Sentence
Table 33	Attitude to Police One Year Later by Attitude Change

at Time of Court Appearance, According to Number of Subsequent Police Contacts

Table 34	Comparison of Respondents' Perceptions of Seriousness of Offense with That of Judges
Table 35	Drug Use and Marketing Correlations
Table 36	Use of Various Illicit Drugs, by Frequency of Cannabis Use, According to Involvement in Buying and Selling Activities
Table 37	Responses to the Question, "Which of the following statements most accurately describes the law about simple possession of cannabis in Canada today?"
Table 38	Frequency of Use and Perceived Severity of Law
Table 39	Frequency of Use and Perceived Severity for Self
Table A.1	Cannabis Offenses by Year, Metro Toronto
Table A.2	Cannabis Possession Offenses by Month and Year, Metro Toronto
Table A.3	Cannabis Possession Offenses by Sex and Year, Metro Toronto
Table A.4	Cannabis Possession Offenses by Age and Year, Metro Toronto
Table B.1	Final Follow-up Status by Age
Table B.2	Final Follow-up Status by Initial Living Situation
Table B.3	Final Follow-up Status by Position
Table B.4	Final Follow-up Status by Sentence
Table B.5	Final Follow-up Status by Frequency of Use
Figure 1	Adult and Juvenile Cannabis Arrests As a Proportion of All Drug Arrests, Canada and the United States, 1970-1978
Figure 2	Sentencing Trends for Simple Possession of Cannabis, Canada, 1967-1978
Figure 3	Flow Chart of the Enforcement Process
Figure 4	Pattern of Subjects' Interaction with Potential Employers in Relation to Record

THE NEW MENACE

CANNABIS
ENCYCLOPEDIA
BRITANNICA

IS COMING!



The Problem: A Matter of Debate

Marijuana was first identified as a “new menace” in Canada by Judge Emily Murphy in 1922. Her influential articles in *Maclean's Magazine* and her book, *The Black Candle*, warned of the mental, physical, and moral hazards of the use of “narcotic” drugs. She listed extensive observations about opium, morphine, heroin, and cocaine, and also raised the alarm about dangers arising from marijuana and hashish. Her sources for the effects of cannabis ranged from the Chief of Police of Los Angeles to the *Encyclopedia Britannica*, and included this description of users by a physician in 1903:

(They are good-for-nothing lazy fellows who live by begging or stealing, and pester their relations for money to buy the hashish, often assaulting them when they refuse the demands. The moral degradation of these cases is the most salient symptom; loss of social position, shamelessness, addiction to lying and theft, and a loose, irregular life makes them a curse to their families. (1922:334)¹

Judge Murphy recommended the establishment of treatment facilities along with strict legal repression of drug commerce and consumption. She could not have anticipated the complexity of the problems posed by the widespread, though criminally prohibited, use of cannabis some 50 years later. Even though some of the harsh provisions incorporated into Canadian narcotic drug law in the 1920s have been removed (e.g. whipping, no appeal from conviction, deportation of convicted aliens), others are still reflected in the current laws governing illicit drugs (e.g. special search warrants, lengthy terms of imprisonment, mandatory minimum prison sentences). Treatment has been a much less prominent feature of Canadian drug policy over this century than a strict law enforcement response.

Cannabis use did not present as a problem in 1923 when it was first added to the schedule of prohibited “narcotics.” Similarly, it was still not assessed as a significant problem by a Special Senate Committee in 1955.² But the situation changed dramatically in the 1960s. In Canada and other western countries, cannabis use moved from the fringe of popular culture to the mainstream. Youthful members from all strata of society experimented with the drug in

increasing numbers. In so doing, they exposed themselves to the possibility of criminal sanction. The wheels set in motion by the legislative initiative of the 1920s began to affect the lives of many young people as they were subjected to arrest, criminal records, and imprisonment. More than one observer has found irony in the widespread application of severe narcotics laws in North America. Originally the laws were directed at a racial and social minority (Asians in Canada, Mexicans in the U.S.), then beginning in the 1960s, they were applied to indigenous, often white, middle class youth (Cook, 1969; Green, 1979; NIDA, 1979). The problem of what to do about cannabis became more pressing as both demand for the drug and the enforcement response escalated.)

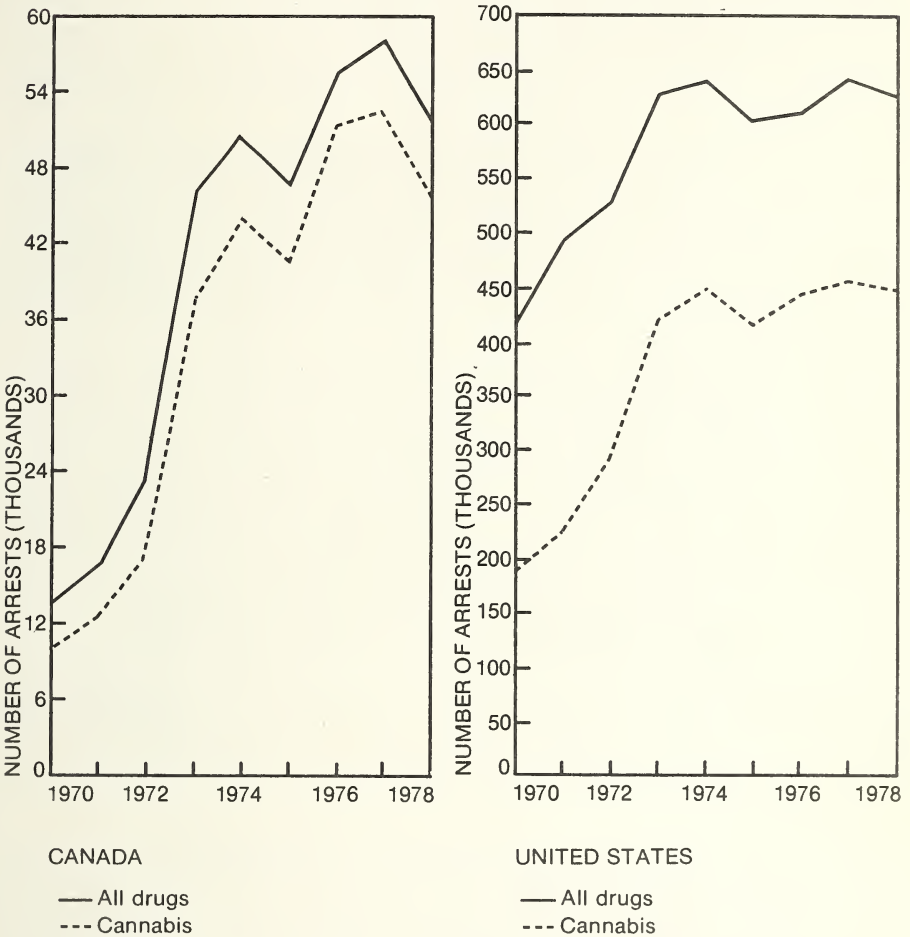
(Efforts to document the extent of cannabis use throughout the 1970s have shown a consistent pattern of increase, particularly among younger persons. In Canada, a nationwide survey of adults (18 years and over) found in 1978 that 17.2% had used marijuana or hashish at some time compared to only 3.4% of a similar group in 1970 (Rootman, 1979). From this study, current consumption levels were highest among the 18 to 29 age group, with 10% reporting use on several occasions in the past month. Surveys of high school students also have shown rises in direct cannabis experience to the point where by 1979, nearly half of graduates had tried the drug (Smart and Fejer, 1974; Smart et al., 1979). Similar trends were documented in the United States during the 1970s, including an increase in daily or near daily use by high school seniors from 6% to 11% between 1975 and 1978 (Johnston, 1980). By 1980, there seemed little doubt that the use of cannabis was not to be a fad.)

(The mobilization of the criminal justice system in response to this growing trend resulted in mounting numbers of new criminals whose crime was the possession of cannabis. By 1979, more than 200,000 Canadians, about 85% under 25 years of age, had been found guilty of this offense.³ The magnitude of this legal response can be gauged by the fact that by 1976, a cannabis offense accounted for one out of every eight federal criminal charges, excluding highway traffic offenses (Bryan, 1979). By 1978, the total number of convictions leading to custodial sentences for cannabis possessors was nearly 10,000.⁴ An overview of federal cannabis policy concluded that "Canada annually arrests more of its citizens per capita for cannabis possession than any other country in the world."⁵ This enforcement effort, if not equalled, was paralleled in the U.S., where in excess of 400,000 marijuana arrests per year were recorded from 1973 to 1978.⁶ In the later year, marijuana arrests represented 72% of all American drug arrests, while in Canada in 1978 cannabis offenses accounted for 89% of all illicit drug charges (see Figure 1).)

The extent of cannabis use and the application of criminal sanctions against users have posed a dilemma for legislators since the

FIGURE 1

Adult and Juvenile Cannabis Arrests As a Proportion of All Drug Arrests, Canada and United States, 1970-78



Source: Statistics Canada, Cat. 85-205

Source: Uniform Crime Reports

late 1960s. The potential health and safety risks presented by excessive or irresponsible use have been complicated by the social costs and adverse individual consequences inherent in the prohibitionist control policy. Much of the initial controversy was concerned with whether cannabis was, indeed, "like heroin" in any other aspect than its legal definition as a "narcotic." However, policymakers soon had at their disposal evidence which permitted an advance of the debate beyond

the era of sensationalism, propaganda, and error. It was established that cannabis was not a "narcotic" in any pharmacological or behavioral sense, its addictive properties were minimal, and its use did not cause people to become criminals or moral degenerates. (Le Dain, 1972; Shafer, 1972). Questions regarding the more subtle, long-term health effects on humans were controversial and stimulated further investigation.⁷ The stage was set by the mid-70s for a more balanced perspective on the issues surrounding an appropriate cannabis policy.

The decade of the 70s had opened with the deliberations of National Commissions in both Canada and the U.S. which were formed to investigate the illicit drug use phenomenon and make recommendations. Both bodies, while accepting the objective of discouraging cannabis use, adopted a principle of cost-effectiveness as their guide. The Le Dain Commission in Canada phrased the issue in these terms:

The object of our social policy must be to reduce the availability and demand of cannabis as much as possible, if that can be done at an acceptable cost. The question is whether, and to what extent, the criminal law is a proper instrument for such a policy. The answer to this depends on how effective the criminal law is in achieving its purpose, what the costs are of using it, and whether there are alternative methods of control that would achieve the purpose as effectively at less cost. (1972:275)

Similar reasoning was voiced by the Shafer Commission in the U.S. (1972:27,135). Given this strategy of attempting to resolve the cannabis quandary within a cost-benefit framework, what were the effects of the prevailing legal policy which were identified as significant?

A major adverse consequence was considered to be the effects of criminal conviction, particularly of young people. The Le Dain Commission identified this as "probably the most serious of the special costs in the application of the criminal law" (1972:293). This body recognized the inherent harshness of contact with the criminal justice system through arrest to court processing, and also enumerated the potential liabilities that could follow from the blot of a criminal record. The Shafer Commission echoed these concerns, as did the U.S. Strategy Council on Drug Abuse at a later date when it called the price imposed for the presumed deterrent benefit of the law as "high in terms of stigmatizing casual users with criminal records" (1976:54).

What was lacking in both the American and Canadian National Commission reports on cannabis, and in much of the debate

since, has been direct evidence of adverse individual consequences of criminalization. While many projects have been conducted on the physical, psychological, and social effects of *using* cannabis, the acquisition of specific knowledge about the impact of the "criminal conviction on young lives" (Le Dain, 1972:292) was not undertaken by either the Le Dain or Shafer Commissions. This cost area was expressed conventionally in terms of number of convictions without supporting evidence of *actual* negative repercussions. Furthermore, the acceptance of deterrent effectiveness was also not subjected to empirical scrutiny, because, as Le Dain noted "we cannot put in question the assumption which underlies the whole of our criminal law" (1972:289). While it is reasonable to assume that the costs of criminal sanction exist, and may be elusive and difficult to quantify with precision, the assumption that has continually been made in the cannabis debate is that they are "high."

This evaluation calls for corroboration. The study reported here has attempted to redress this imbalance by examining a group of criminalized cannabis users. A representative sample of "first offenders" was interviewed at the time of sentencing and one year later. Their experiences of becoming criminals and the related social effects provide a previously unavailable component of the cost-benefit analysis pertaining to cannabis policy. This work points to the value of obtaining an empirical base for the assessment of existing drug laws and proposed reforms. While recognizing that research cannot answer the basic value question of individuals' right to take drugs that may harm only themselves, systematically collected data may aid the policy maker in this process of reconciliation of old law and new pressures. Glaser's directive describes this role for the researcher in a policy relevant area:

What sociological criminologists have been doing but need to do much more adequately is to estimate all the social costs and benefits that would result if criminal law or alternative means were used in an effort to reduce [drug use]. (1971:35)

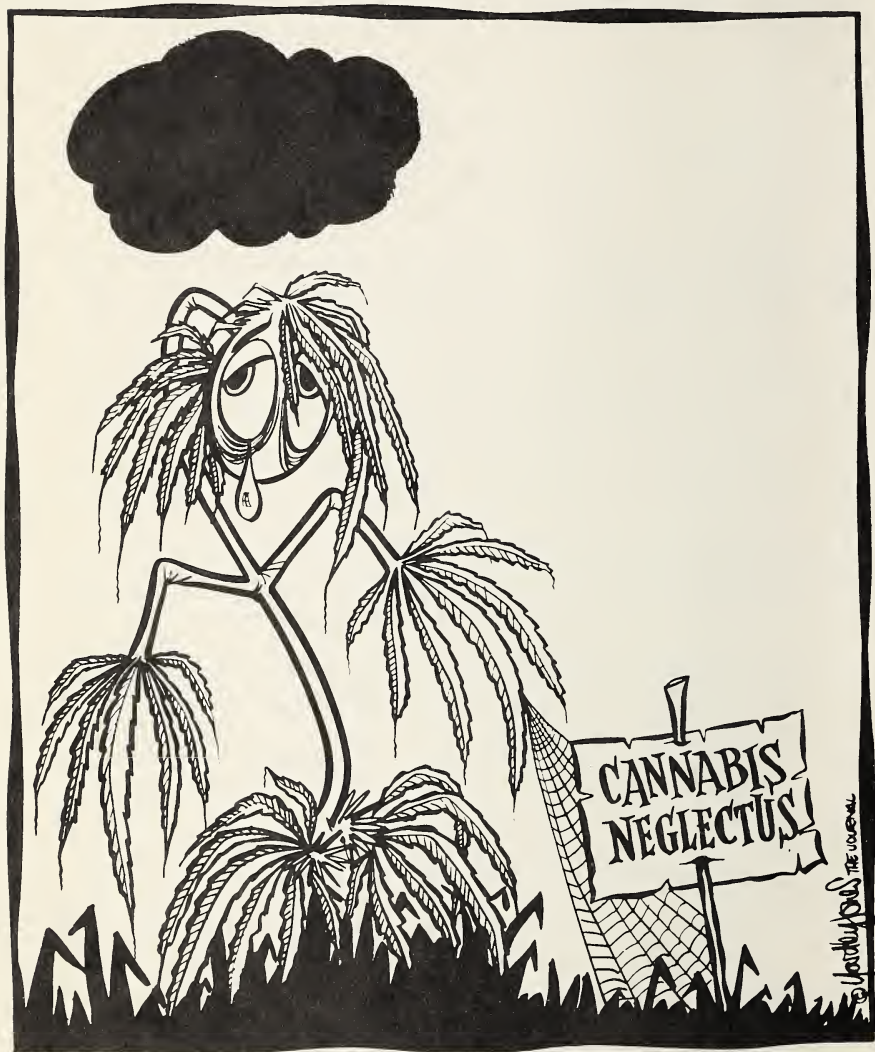
The social effects of punishment on individuals, encompassing both costs in a variety of spheres of their lives and the possible benefit of deterrence from further cannabis use, form the substance of the findings in this study. They are reported in Chapters 5 and 6. The theoretical rationale, the historical-legal background of the current cannabis prohibition, and a model of criminalization are presented in Chapter 2. Criminalization throughout this study is defined to include the process of arrest through to official labeling with a criminal record, and the subsequent effects, as they vary with the sentence received. Chapter 3 describes the design of the study and the characteristics of the study population. Chapter 4 highlights the process of "becoming a cannabis criminal" through the subjective

perspective of the offender. As noted, the next two chapters deal with the impact of criminalization as measured at the time of sentencing and one year later. The final chapter concerns the implications of the results of the study for the user, the law, and society. It is concluded that being criminalized for cannabis possession has some adverse consequences to individuals' lives and almost no specific deterrent effect.

Notes

CHAPTER 1: The Problem

- 1 The referencing system in this text cites the source by author's name, followed by year of publication, and then page number(s) if quoting directly. For example, Smith (1970:223).
- 2 The Senate of Canada: *Proceedings of the Special Committee on the Traffic in Narcotic Drugs in Canada*, 1955, p. xii.
- 3 Source: Bureau of Dangerous Drugs, Health Protection Branch, Health and Welfare Canada.
- 4 This figure does not include the approximately 10,000-15,000 persons who, by 1978, were incarcerated in default of payment of a fine (estimated by Bryan, 1979).
- 5 *Cannabis Control Policy: A Discussion Paper*. Health Protection Branch, Health and Welfare Canada (Blackwell et al., 1979).
- 6 Source: *Uniform Crime Reports*. Washington, D.C.: U.S. Department of Justice.
- 7 The burgeoning interest in the effects of cannabis use is reflected in the approximately 1,500 pieces of research, the large majority of which postdate 1972, collected in a forthcoming annotated bibliography (Kalant et al.). The scientific evidence has increasingly supported the conclusion that the chronic heavy use of cannabis, and use by individuals at particular risk because of pre-existing conditions, pose potential health hazards to humans (see Tinklenberg, 1975; Fehr et al., 1980; NIDA, 1980).



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The Perspective: Theoretical Issues, Legal Context, Model

The focus of this book is upon the societal response to a particular form of criminally sanctioned behavior — cannabis use. The adverse and beneficial social consequences of applying the criminal sanction to drug users have received scant systematic analysis. In this chapter, some of the theoretical issues surrounding the effects and purpose of the criminal law will be explored in order to show how the criminalization of drug users relates to broader concerns in sociology and law. Then a summary and historical overview of Canadian narcotic drug law and its enforcement will set the problem in a legal context. Finally, a model of criminalization will be presented as a means of assessing the impact of the policy on individuals subjected to criminal sanction.

LAW AND LABELING

Aside from the direct policy implications, an interest in the criminalization of cannabis offenders also arises in two related perspectives. The first of these is the “labeling” school of sociology, which has raised the question of whether the response to deviance may be more problematic than the behavior itself. Secondly, with respect to law, scholars have been concerned with arguments about the proper limits of the criminal sanction for more than a century. A brief review of the perspective of each of these two areas is important because without them, the questions addressed by this study might not have been asked.

The absence of agreement as to whether cannabis consumption should be considered a crime places a study of the effects of cannabis prohibition broadly within the conflict tradition of sociology. The theorists of the consensus school tend to concentrate on laws backed by strong social support and disregard those without it (Hopkins, 1975:615). In contrast, those adopting a conflict vantage point tend to find their subject matter in laws which lack normative agreement (Rubington and Weinberg, 1977:248). In essence, consensual theories of crime are more interested in explaining illicit

behavior while conflict theories are more concerned with the variable status of behavior (Hagan, 1977:141).

IMP. The labeling perspective emphasizes the *societal response* to a particular behavior. This theoretical approach has been expressed in the work of a number of sociologists over the past 40 years,¹ and has particular relevance to the study of the consequences of the process of community or official responses. Within this framework, attention is redirected from an individual and his or her "deviant" behavior toward the nature of the official reaction and its effects on an individual's identity and social position. A central concern expressed by the labeling approach is that the official response to an act of primary deviation may intensify both self perceptions and other perceptions, so that the "deviant" label is confirmed as a kind of master status. In the process of secondary deviation, escalation of the disapproved conduct, rather than cessation, results (Lemert, 1951). The public identification of the rule-breaker is the necessary condition for defining deviance and is considered particularly crucial in determining subsequent behavior (Becker, 1963:31). The application of a criminal label is viewed as especially degrading and stigmatizing (Garfinkel, 1956). The labeling perspective implicitly, therefore, suggests liabilities associated with this process, and poses the question of what is ultimately the effect of creating criminals.

Even critics of the labeling perspective have acknowledged its special contribution to policy-relevant studies of criminalization:

The labeling hypothesis stimulates thinking about the costs of applying the criminal law to certain categories of disapproved behaviors. It . . . urges assessment of the relative costs and benefits of the criminalization or decriminalization of immoral, peculiar, or unhealthful conduct. (Nettler, 1974, cited in Rubington and Weinberg, 1977:232)

Since Becker (1963), several writers have also relied on the example of marijuana use to portray the significance of criminal prohibition by distinguishing the degree of response to various socially disapproved behaviors.² Again, Nettler has made this point:

The careers of some different kinds of people are made even more different by the fact that some portion of their lives must be spent in dodging the consequences of the official response to their deviance. The model here is that of the marijuana user, whose life may be changed by the criminalization of his preference. (p. 232)

Thus, an interest in the criminalization of cannabis offenders is intimately related to the broader concerns of the labeling perspective in sociology.

The labeling or societal reaction perspective has contributed to the formulation of this study, but this should not be taken as any confirmed acceptance of its tenets. This study has, however, attempted to document empirically the types of outcomes associated with the particular label, "cannabis criminal." The relatively small amount of systematic research actually done on the propositions of labeling has provided rather limited support for its assertions (Jensen, 1972; Foster et al., 1972; Ageton and Elliot, 1974; Giordano, 1975; McAllister, 1974; Siegal, 1975; Hepburn, 1977). As Hagan (1977) has noted, we are only beginning to find out whether interrelationships of individual, situation, and penalty produce either positive or negative effects, if any effect at all.

The second theme drawn upon in this study is the discussion among legal scholars about the appropriate scope of the criminal sanction. The view that the criminal law has been seriously over-extended in this century is reflected in these titles: *The Crisis of Overcriminalization* (Kadish, 1967), *The Borderland of Criminal Justice* (Allen, 1964) and *The Limits of the Criminal Sanction* (Packer, 1968). These authors argue that the criminalization of certain activities which are primarily matters of personal health and morality creates disrespect for the tradition and role of law, and overburdens the criminal justice machinery. Moreover, while enforcement may be, on the whole, ineffective in preventing or reducing these types of "crimes," it may inhibit the discovery of alternative means of dealing with the problems (Giffen, 1976b). Thus the criminal justice system is deflected from its principal task of responding to "serious" crime in the community. Recently, the Law Reform Commission of Canada has taken up these arguments in *Our Criminal Law* (1976) and attempted to provide broad guidelines for the reform of the criminal law. In a rational and systematic way, "harm" of particular behaviors would be assessed and decisions made to remove them from the *Criminal Code* if certain criteria were not met, such as being "wrongful acts seriously threatening . . . fundamental social values" (1976:20).

The Law Reform Commission of Canada has made no recommendation officially on cannabis, but it did include drug offenses in its list of those "whose wrongfulness and seriousness today [are] controversial [and] should be carefully reconsidered" (1976:27). In testimony before the Senate hearings on proposed changes in Canada's cannabis law, the Chairman of the Law Reform Commission made a more specific statement about the application of the criminal law to this behavior:

In addition to the costs to the individual convicted and the economic cost to society, the criminal law may exact a less easily quantified cost to society in terms of resentment, disrespect, and alienation. The costs associated with criminal law are so great that its use against marijuana use could

only be justified on a clear showing of serious harm to others, but not (except in the case of children) if the evidence shows that it only harms the user. . . . If deterrence and reform wouldn't work or if they would hardly work, then using criminal law under this head would impose benefit-less costs.

(Senate, 1975: 40-42)

Thus, the concern of the legal scholars can be seen to be directed at the same subject matter as the proponents of the labeling perspective, i.e. the legal status of crimes that lack societal consensus. The criticism of the tendency to "overcriminalize" stems from a sense of the proper role and function of the law in society. While the labeling approach focuses on the effects on the *individual* processed, the legal critics have highlighted the stresses on the *justice system* created by types of legislation such as the cannabis prohibition. Areas of research suggested by this legal perspective include: the enforcement process (e.g. effects on the target group and reciprocal reaction in the community); the judicial process (e.g. workload, actual and perceived consistency of sentencing); and attitudes of respect or disrespect for the law (e.g. as displayed by offenders and the larger public). Thus both the labeling perspective and the overcriminalization stance encourage the assessment of the costs and benefits associated with the use of the criminal law in an effort to control conduct that draws uneven social disapproval. The relative effectiveness of the policy then can become a matter for debate and possible legal change.

CANADIAN DRUG LAW: Its History and Application

The Current Situation in Brief

Although cannabis is not an opiate narcotic in any pharmacological sense, the law governing all cannabis substances is the *Narcotic Control Act*.³ In Canadian criminal law, there are three categories of offenses: summary, indictable, and hybrid offenses. Of the chief offenses under the *Narcotic Control Act*, only unauthorized or "simple" possession is a hybrid offense and can be treated as either summary or indictable by the crown. The other offenses — trafficking, possession for the purpose of trafficking, importing, and cultivation — are all indictable offenses.

The penalties provided for offenses involving cannabis are the same as for the opiate narcotics and cocaine which are also included in the prohibited drug schedule of the *Narcotic Control Act*. The maximum sentence for cultivation and simple possession as an indictable proceeding is seven years imprisonment, and for the other

offenses, life imprisonment. A minimum sentence of seven years is stipulated for the importation of narcotics. On the summary option for simple possession, the maximum penalty for a first offense is a fine of \$1,000 and/or six months imprisonment; these limits are doubled for a repeated offense. An absolute or conditional discharge, which imposes a finding of guilt but not a conviction, is a sentencing possibility for simple possession and cultivation only. Fine, probation, or discharge are the most common outcomes of a possession charge, while a jail term is frequently imposed for the other offenses, and for importing always.

Canadian law extends special powers to the police to aid in the apprehension of suspected drug law violations (see Solomon, 1980). Under the authority of section 10 of the *Narcotic Control Act*,

- (1) *a peace officer may, at any time,*
 - (a) *without a warrant enter and search any place other than a dwelling house . . . in which he reasonably believes there is a narcotic by means of or in respect of which an offence under this Act has been committed;*
 - (b) *search any person found in such a place. . . .*

A general warrant called a writ of assistance, issued in the name of a Royal Canadian Mounted Police (RCMP) officer, extends the power to the search of a dwelling and its inhabitants.⁴ In conducting a search for prohibited substances,

*. . . a peace officer may, with such assistance as he deems necessary, break open any door, window, lock, fastener, floor, wall, ceiling, compartment, plumbing fixture, box, container or any other thing.*⁵

The reasonable belief of an officer as a foundation for drug searches includes "confidential police information" that need not be revealed in court.⁶

These police powers of search in drug matters are part of a legal system which permits the admissibility in a court of law of illegally obtained evidence relevant to the offense. This is in contrast to the operation of the exclusionary rule in the United States which renders inadmissible in a trial any evidence obtained by illegal search (Casenotes, 1978:584). In Canada, an individual convicted on the basis of illegally obtained evidence has little recourse other than to press a civil suit against the arresting officer. This distinctive feature of Canada's legal institution, in combination with special police powers of warrantless search and blanket warrants against drug crime, create a favorable climate for vigorous enforcement of the cannabis prohibition.

TABLE 1

Major Developments in Canada's Drug Laws, 1908-1979

Year	Legislation	Substance	Maximum Penalties* and Provisions
1908	Opium Act	Opium	— 3 yrs. imprisonment and/or \$1,000 fine
1908	Proprietary or Patent Medicine Act	Labeling of medicine containing scheduled drugs (included heroin and cannabis)	— \$50 fine for first offense — \$100 fine for subsequent offense
1911	Opium and Drug Act	Cocaine, opium, morphine and its compounds	— 1 yr. imprisonment and/or \$500 fine — Possession offense introduced — First controls on legitimate trade
1920	Opium and Narcotic Drug Act	As above	— 1 yr. imprisonment and/or \$1,000 fine — Extended licensing provisions to sale and manufacture of scheduled drugs — Stricter recording requirements for legal distribution
1921	Amendment to above	As above	— 7 yrs. imprisonment — Further restriction on prescribing and recording for medical usage
1922	Amendment to above	As above	— Mandatory minimum 6 mos. imprisonment — Whipping for trafficking to minors — Police given the right of warrantless search of any premises except a dwelling — Deportation of convicted aliens

1923	Amendment to above	Addition of cannabis and codeine to the above	— Restrictions on appeals — Provisions for photographic and fingerprint records — Mandatory fine <i>and</i> imprisonment — Onus of proof to justify medical usage shifted to physician
1925	Amendment to above	Deletion of codeine	— Sentencing option of hard labor — Police right of search extended to persons in premises — 5 yrs. imprisonment for unlawful prescribing
1929	Opium and Narcotic Drug Act	As above	— Whipping extended to possession and distribution — Creation of writs of assistance which extend police power of search to dwellings — Mandatory minimum for unlawful prescription or administration by medical professionals
1938	Amendment to above	As above	— Cultivation offense introduced
1954	Amendment to above	As above	— New offense "possession for purpose of trafficking" placed onus on accused to show no intent to traffic — 14 yrs. imprisonment for trafficking — 7 yrs. imprisonment for possession, cultivation

Year	Legislation	Substance	Maximum Penalties* and Provisions
1961	Narcotic Control Act	As above, plus numerous opium derivatives and synthetic analgesics	— Eliminated whipping — Life imprisonment for trafficking, importing — Mandatory minimum 7 yrs. for importing; abolished other minimum penalties — A treatment provision was included but never proclaimed
1969	Amendment to above	As above	— Possession: upon summary conviction, 6 mos. imprisonment and/or \$1,000 fine for first offense, 1 yr. imprisonment and/or \$2,000 for subsequent offenses; upon indictment, 7 yrs.
1969-1970	Additions to Food and Drugs Act Part III	Controlled drugs (amphetamines, barbiturates, etc.)	— No possession offense — Trafficking: summary, 18 mos.; indictment, 10 yrs.
	Part IV	Restricted drugs (LSD, MDA, some other hallucinogens)	— Possession: upon summary conviction, 6 mos. imprisonment and/or \$1,000 fine for first offense, 1 year imprisonment and/or \$2,000 for subsequent ones; upon indictment, 3 yrs. imprisonment and/or \$5,000 fine — Trafficking: upon summary conviction 18 mos. imprisonment; upon indictment, 10 yrs. imprisonment (importing included with trafficking)

*Refers to both possession and distribution offenses unless otherwise stated. No distinction was made regarding penalties from 1911, when possession offense was first introduced, until 1954.

After legal changes in 1969 and 1972 which made less severe penalties available for simple possession, in November 1974 the Trudeau government introduced new cannabis legislation in the Senate, Bill S-19.⁸ This marked the first effort in Canada to separate cannabis by statute from the opiate narcotics and cocaine. Bill S-19 proposed to remove cannabis from the *Narcotic Control Act* and place it in a special section of the *Food and Drugs Act*,⁹ which governs controlled drugs (such as amphetamines and barbiturates) and restricted drugs (such as LSD and other strong hallucinogens). After discussion and modification in the Senate, the new amendment was forwarded to the House of Commons where it died on the order paper of Parliament in 1976. No other cannabis legislation was introduced for the remainder of the decade. In early 1980, the legislative plans put forward by the new Trudeau administration in the Speech from the Throne included a proposal to move cannabis to the *Food and Drugs Act*.

In brief, Canadian narcotic drug law remains among the harshest anywhere. Since the inclusion of cannabis in the *Narcotic Control Act* in 1923, it has been legally defined as a "narcotic," inextricably linked with heroin in law and public belief. However, in the mid-1960s perceptions began to alter. With the growing influx of marijuana offenders before the courts, the harshness of the legal response became an object of concern (Cook, 1970). Given the popularized evidence of cannabis' minimal addictive properties, questions were raised as to why it should still be treated, in law, the same as heroin. Therefore, the next section will provide an historical overview of the evolution of Canadian narcotic drug law, to set the stage for the creation of "cannabis criminals" in the mid-1960s. Then the following sections will describe the legal response to cannabis use from 1965 to 1979.

The Development of Narcotic Drug Law up to 1965

The history of the initial narcotic drug legislation has been documented extensively by Cook (1969); Green (1979); Solomon and Green (1980); and Giffen et al. (forthcoming). The first anti-opium statutes, directed at immigrant Chinese, were enacted in 1908. Subsequent debates, concerned also with cocaine and morphine, led to the *Opium and Drug Act* of 1911 and the *Opium and Narcotic Drug Act* of 1920. The addition of cannabis to the schedule of prohibited drugs in 1923 was accomplished without provoking any discussion in Parliament (Cook, 1969).¹⁰ Major developments are summarized in Table 1.

Since 1911, when the possession offense was created, narcotic statutes did not separate it from the offenses of importation, manufacture, and sale in terms of the sentences provided. A series of amendments in the 1920s stipulated progressively more severe

penalties for all these offenses, and greatly extended police powers of search and seizure. By 1929, mandatory minimum penalties and a maximum of seven years imprisonment were in effect, along with whipping and sentencing to hard labor. In 1922, peace officers received the right to search, without a warrant, any place except a dwelling in which they suspected illicit drugs were concealed. Police powers were expanded further in 1929 through a measure called a writ of assistance which conveyed special powers for searches of dwellings (see Solomon, 1980). During this era, physicians' authority to treat opiate dependent persons was progressively diminished. Severe penalties and unusually broad police powers pertaining to both sale and possession of "narcotics" set the stage for defining the addict or drug user, along with the trafficker, as a criminal.

racism
Ramp marijuana
 This pattern, which was to dominate the next half century, has been attributed to two principal factors (Giffen et al., forthcoming; Green, 1979; Solomon and Green, 1980). The first was that opiate narcotic use was associated with a negatively stereotyped racial group, the Asiatics, and to a lesser extent, unconventional low-status whites. The creation of the "dope fiend" stereotype made it possible to approach addiction as a moral crusade, demanding harshly punitive measures (Anthony and Solomon, 1973). Soon-to-be Prime Minister MacKenzie King successfully mobilized this cultural antagonism on behalf of a political interest group wishing to prevent further Asiatic immigration. Canada played a prominent role in the international movement among western nations to criminalize the use and distribution of narcotics. The second factor was that the federal law enforcement agency (RCMP), in conjunction with the Division of Narcotic Control in the Department of Health, from 1920 onwards gained a virtual monopoly over narcotics policies during the crucial early legislative period. At this time, the Canadian medical profession was only weakly organized, similar to the U.S. situation, whereas in Britain medical professionals retained a large measure of control over the treatment of addicts.

In 1955, the special Senate Committee on the Traffic in Narcotic Drugs made the following comment on marijuana:

No problem exists in Canada at present in regard to this particular drug. A few isolated seizures have been made but these have been from visitors to this country or in one or two instances from Canadians who have developed this addiction while being in other countries.

(Quoted in Le Dain, 1972:230)

The "problem" was to emerge in the mid-1960s with the rapid escalation of various forms of recreational drug use by young persons. At this time, cannabis was governed by severe penalties fashioned expressly for the opiate narcotics.

Legal Response to Cannabis Use from 1965

Until recently, the federal drug legislation in the *Narcotic Control Act* and the *Food and Drugs Act* has been held to be based constitutionally upon the criminal law power (Le Dain, 1972:213). However, the 1979 decision of the Supreme Court of Canada in *R. v. Hauser* provided a different basis for federal jurisdiction in this area.¹¹ The Court reasoned that, since drug abuse was not a problem in the 19th century at the time of Confederation (1867), federal drug law was to be classified with other new developments (e.g. aviation, radio communications) as "legislation enacted under the general residual federal power." This is generally referred to as the "Peace, Order, and Good Government" clause or the general power of Parliament (Le Dain, 1972:254). The implications of the *Hauser* case for cannabis policy, and indeed all policies regarding prohibited drugs, are not clear (see Bryan, 1979; Hovious, 1980). The potential for creating non-criminal drug violations has been significantly expanded. Further clarification must await the attention of the judiciary and Parliament.

The shift in the constitutional basis of drug law by the *Hauser* ruling in no way limits federal jurisdiction over illicit drugs. As in the past, provincial governments are effectively precluded from enacting criminal prohibitions in the illicit drug field; they remain the exclusive domain of the federal government. A certain degree of consistency has been inherent in the structure of Canada's drug laws, as well as a tendency towards conservatism in drug law reform. Uniformity has been enhanced by assigning the primary responsibility for enforcement and prosecution of drug laws, respectively, to the Royal Canadian Mounted Police and the federal crown prosecutors from the office of the Department of Justice.

The contemporary official response pattern, in continuance of historical precedent, has been to rely primarily on the criminal sanction to deter non-medical drug use. Law enforcement has been the traditional response to narcotic drug use throughout this century. The treatment approach, which gained some momentum in the 1950s in response to problems of heroin addiction, was not extended to the emerging category of youthful users of marijuana and other hallucinogenic substances. As Table 2 shows, in terms of sheer volume, convictions for cannabis offenses have involved far more persons directly than any other illicit drug. Cannabis use, which is translated into legal terms as the crime of simple possession, has received a greater response than other offenses (i.e. trafficking, possession for the purpose of trafficking, importing, and cultivation). Table 3 indicates that in any given year the large majority of cannabis convictions are for simple possession. In overview, official record data for 1965 to 1978 show that vigorous enforcement against cannabis use was accompanied by a lessening in severity of dispositions for simple possession (Table 4). Phases in the response to cannabis use will be characterized

Drug
Quincy
Winter
1975
1976
1977
1978
(Hauser)

as "Get Tough" (1965-1968), "Initial Softening" (1968-1971), "Reduction of Penalties" (1972-1974) and "Malign Neglect" (1975-1979). Topics to be examined include the law, official arrest and conviction statistics,¹² sentencing trends, and enforcement practices.

"Get tough" (1965-1968)

As noted, the legislation governing illegal behavior with respect to cannabis during the period 1965-1968 continued to be the *Narcotic Control Act*. Cannabis had been added to its schedule of prescribed drugs in 1923. From that time, all the changes in the *Narcotic Control Act* which incorporated progressively more severe penalties automatically applied to cannabis. When the first influx of persons charged with simple possession of marijuana and hashish began to appear in court, the prosecutor had no choice under the *Narcotic Control Act* but to treat the charge as an indictable offense. The term "indictable" in Canadian law refers to offenses which are viewed as "more serious" and carry a maximum penalty of more than two years incarceration; the "less serious" summary proceeding

only
indictable
(not a
hybrid)

TABLE 2

Total Convictions for Various Drugs, Canada, 1965-1978

Year	Heroin	Methadone	Cocaine	LSD ^a	MDA ^a	Cannabis
1965	266	6	3			60
1966	221	3	1			144
1967	348	19	—			586
1968	279	23	2			1,429
1969	310	15	1			2,964
1970	383	14	12	1,558	72	6,292 ^c
1971	502	82	19	1,644 ^b	325	9,478
1972	923	81	44	1,161	534	11,713
1973	1,290	43	123	970	792	19,929
1974	798	24	237	1,482	501	29,067
1975	511	26	289	1,570	318	27,367
1976	438	11	265	789	250	33,281
1977	375	12	336	612	221	37,812
1978	402	5	392	577	153	31,718

Source: Bureau of Dangerous Drugs (BDD), Health Protection Branch, Health and Welfare Canada.

^aNot prohibited until 1970, under Part IV of the *Food and Drugs Act*.

^bAltered from BDD summary table to correspond to Table E.55 of *Final Report* (Le Dain, 1973:891).

^cAltered from BDD summary table on the basis of Table A.1 of *Cannabis* (Le Dain, 1972:322).

TABLE 3
*Charges and Convictions Involving Cannabis under
 the Narcotic Control Act, Canada, 1968-1978*

Year	Total Persons Charged ^a	Persons Convicted ^b				
		Total Convicted	Simple Possession	Trafficking	Possession for the Purpose of Trafficking	Importing Cultivating
1968	not available	1,429	1,077	211	131	2 7
1969	4,756	2,964	2,313	454	179	6 12
1970	9,977	6,292	5,419	448	356	26 43
1971	12,543	9,478	8,389	476	533	22 58
1972	17,153	11,713	10,695	290	620	33 75
1973	37,668	19,929	18,603	299	914	27 86
1974	43,954	29,067	27,202	429	1,281	24 131
1975	40,282	27,367	25,056	649	1,523	34 105
1976	51,253	33,281	30,523	886	1,709	29 134
1977	52,233	37,812	33,961	1,296	2,376	34 145
1978	45,650	31,718	27,609	1,714	2,215	24 156

^a Source: *Crime Statistics, Police*, Catalogue 85-205, Statistics Canada.

^b Source: Bureau of Dangerous Drugs, Health Protection Branch, Health and Welfare Canada, and Cannabis (1972:322-323). Discharges are included in "Conviction" totals in this source.

TABLE 4
Sentences Awarded for Simple Possession of Cannabis, Canada, 1967-1978

Year	Imprisonment	Fine Only ^a	Suspended Sentence	Discharge ^b	Total	(N)
1967	46		53		100%	(431)
1968	46.3		52.7		100%	(1,077)
1969	33.9	17.6	48.5		100%	(2,313)
1970	10.1	68.2	21.6		100%	(5,419)
1971	6.8	77.3	15.9		100%	(8,389)
1972	5.3	70.4	11.5	12.8	100%	(10,695)
1973	4.7	70.8	8.5	16.0	100%	(18,603)
1974	3.7	68.6	7.6	20.1	100%	(27,202)
1975	4.4	66.1	6.9	22.6	100%	(25,056)
1976	4.1	66.4	7.1	22.4	100%	(30,523)
1977	3.9	65.7	5.9	24.5	100%	(33,961)
1978	4.3	62.7	6.3	26.7	100%	(27,609)

Source: 1967-1971: *Cannabis* (1972): 249, 290, 324-325.

Source: 1972-1979: Bureau of Dangerous Drugs, Health Protection Branch, Health and Welfare Canada.

^aNot an option in law until August, 1969.

^bNot an option in law until July, 1972.

Place
in
the
category of
sentences

(carrying lesser penalties) was not available at this time. If the defendant was found guilty of simple possession, the *Narcotic Control Act* provided for a term of imprisonment up to seven years. The only option open to the judge, other than incarceration, was to suspend sentence and impose probation. The monetary sanction was excluded by a provision in the Canadian *Criminal Code* which disallows a "fine only" penalty for an indictable offense that carries a maximum sentence of more than five years in prison.¹³ At this time, the penalty for cultivation was the same as for simple possession, and conviction for trafficking, possession for the purpose of trafficking, and importing could result in life imprisonment.

Total convictions for cannabis offenses in Canada rose from 60 in 1965 to 1,429 in 1968 (Table 2). A breakdown of total convictions by type of offense was not retrievable from official records until 1968. In that year, 75% of total convictions were for simple possession (Table 3).

During this interval, the chances of going to prison for simple possession were about even; Table 4 shows that the odds were slightly in favor of getting a suspended sentence rather than jail. In addition to the factor of a prior record, sentencing variation for drug offenses has been held to be related to regional discrepancies in judicial behavior (Cook, 1970:138; Whealy, 1970:276). Ontario Magistrates' and Appeal Court decisions at this time tended to be generally more lenient than their counterparts in other provinces. The more punitive decisions in this period often referred to the intent of Parliament to treat the matter of simple possession as serious by permitting a maximum seven-year sentence.¹⁴ The judicial reasoning appeared to be that the increase in marijuana use required the imposition of severe punishment in the interests of deterrence (Le Dain, 1972:247-249).

The ever-increasing number of accused being dealt with by the courts during the "Get Tough" period was mainly the result of the enforcement efforts of the RCMP. This agency has a long history of close cooperation in the drug field with national enforcement agencies in other countries, INTERPOL, municipal and provincial forces in Canada, and the Division of Narcotic Control in the federal Department of Health. Most police departments in larger cities already had a drug squad, sometimes as part of the morality squad, and these were expanded to deal with the upsurge in availability of cannabis and other drugs. The procedure at this time was for the local force to turn over evidence of drug crimes to the RCMP for further action.

As described earlier, the *Narcotic Control Act* provides all police with unusually broad powers of search with respect to drugs. The police may enter and search any premises except a dwelling and search any person found therein, without the necessity of an arrest, when they reasonably believe an offense regarding a prohibi-

ted drug is being committed. RCMP officers have an additional power; granted under a general warrant called a writ of assistance, to enter and search a dwelling and its occupants, with any assistance required, under the same conditions. A writ of assistance has no limitations on time or place, is not subject to judicial accountability, and is valid during the entire career of the particular officer to whom it is issued.

In summary, during this period; judges, prosecutors, and police had inherited a *Narcotic Control Act* that provided severe penalties, few sentencing options, and broad powers for apprehending and punishing cannabis offenders. The application of a criminal justice apparatus designed for opiate control to the ever-increasing availability and use of cannabis resulted in a rapid increase in convictions for simple possession of marijuana and hashish. Imprisonment was a common outcome. During this "Get Tough" period, the public awareness and debate over drug use, which contributed to the formation of the Le Dain Commission in 1969, also focused attention on the growing criminalization of young persons for cannabis use. Questions and criticisms were raised in Parliament concerning the severity of sentences being given by the courts (Cook, 1970:145). It appeared that change in the cannabis law might be imminent.

"Initial softening" (1969-1971)

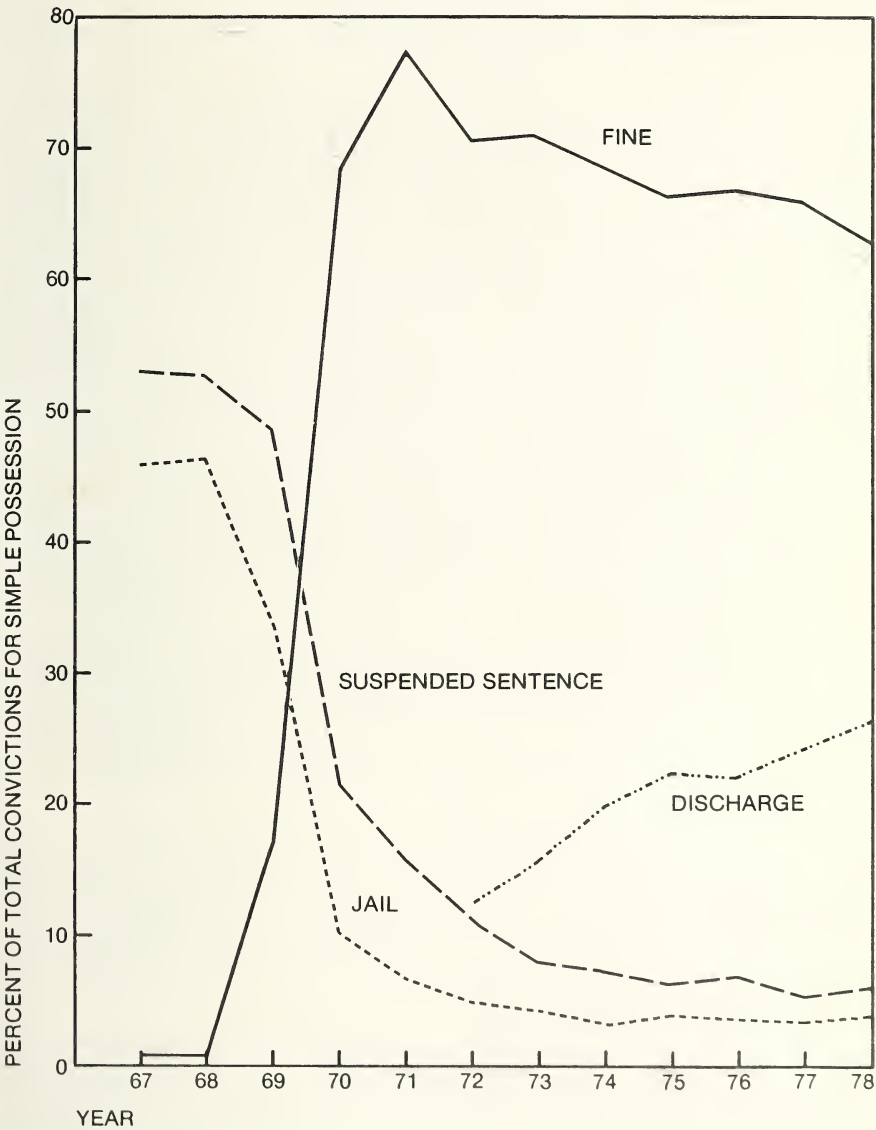
Although statements by the Minister of Health and Welfare in late 1968 suggested that marijuana might soon be added to the schedule of restricted drugs, along with LSD, in the *Food and Drugs Act* (Cook, 1970), this did not occur. Instead, by defining possession as a hybrid offense, an amendment to the *Narcotic Control Act* in August 1969 permitted summary proceedings in cases of simple possession of any narcotic. The discretion of crown prosecutors to choose this option was guided by the federal Department of Justice which issued "general rules" to direct the application of the new amendment. For cannabis, summary conviction was recommended for a first or second offense; indictment was directed for a third or subsequent offense and after a conviction relating to hard drugs (Le Dain, 1972: 246). Sentences under the summary election were limited to a six-month term and/or a fine of up to \$1,000 for a first offense and one year's imprisonment and/or a \$2,000 fine for subsequent offenses.

During the 1969-1971 period, the figures representing total arrests and convictions for cannabis offenses continued to mount. As Table 3 indicates, convictions for simple possession numbered 2,313 in 1969 and 8,389 in 1971 — more than a three-fold increase. Although convictions for drug offenses other than simple possession of cannabis also rose, numerically they represented far fewer persons. The *Narcotic Control Act* was being enforced mainly against cannabis, and against possession of the drug rather than distribution.

Trends in sentencing for simple possession shifted abruptly in 1969. Judges began making use of the "fine only" option that was

FIGURE 2

*Sentencing Trends for Simple Possession of Cannabis,
Canada, 1967-1978*



made possible in mid-1969. In cases between 1969 and 1970, the imposition of imprisonment was reduced from 33.9% to 10.1%, and a suspended sentence from 48.5% to 21.6% (Table 4). By the end of 1971, 77.3% of all convictions resulted in only a fine. Figure 2 illustrates this shift in sentencing patterns for possession. Data which were not available until 1970 on sentencing for the two types of trafficking offenses show a fairly stable trend towards imprisonment in about 80% of convictions (Le Dain, 1972:250).

The beginning of an important change in enforcement patterns occurred in this period. The RCMP enlarged its own drug squad from about 185 officers in 1969 to nearly 300 in 1971 to respond to the increase in the availability of cannabis. They began to prepare municipal forces to recognize and deal with drug offenses, and started to turn over responsibility for the laying of charges in simple possession cases to regular police officers. It is not possible to pinpoint just when this changeover began or at what rate it occurred. The Le Dain Commission, writing in 1972, was not able to be more specific than "the last year or two" (1972:244). In light of the transformation of drug enforcement from a highly specialized RCMP task to a more routine police activity, local forces instigated or enlarged their own drug squads and trained police constables in related procedures. The shift appears to have been a gradual process of the early 70s, and was given official acknowledgment by 1973.¹⁶ The resulting infusion of manpower into the drug enforcement field may have been a contributing factor, along with increased use levels, to the continued rapid rise in arrests and convictions for simple possession in the 70s.¹⁷

In review, the "Initial Softening" response from 1969-1971 was characterized by a legislative change which led to more lenient dispositions for the offense of simple possession of cannabis. However, this period was also marked by a large upswing in arrests and convictions and by an increase in police resources for enforcement.

"Reduction of penalties" (1972-1974)

During the 1972-1974 period, the federal government took two steps which continued a policy of mitigating the severity of penalties for cannabis offenses. The first was the passing of the discharge provision in 1972, and the second was the introduction in 1974 of a bill to move cannabis control from the *Narcotic Control Act* into the *Food and Drugs Act*.

A discharge is generally intended to relieve the offender of some of the unduly harsh consequences of a criminal conviction (Leon, 1977b:53). Judges have the discretion to award a discharge when they consider that this course is "in the best interests of the accused and not contrary to the public interest."¹⁸ The interim publication of the Le Dain Commission recommended an absolute discharge provision for first offenders in cases of simple possession of psychotropic drugs

(1970:252). Although this type of sentencing option had been under consideration for some years, there is a likelihood that concern with the growing number of young drug offenders hastened the passage of discharge into law sooner than might otherwise have been the case (Leon, 1977b:39).

In July 1972, the discharge provision came into effect. The court was given the option, when an accused pleaded or was found guilty, to grant an absolute discharge or a conditional discharge (in which a term of probation is imposed). The *Criminal Code* reads that an accused who is discharged "shall be deemed *not to have been convicted of the offense*" (emphasis added).¹⁹ However, an amendment to the *Criminal Records Act* which became law at the same time as the discharge provision stated that, "This act applies to a person who has been granted an absolute or conditional discharge . . . *as if he had been convicted*" (emphasis added).²⁰ Since the *Criminal Records Act* provided terms by which someone could receive a pardon for a criminal record attained through conventional conviction for a criminal offense, this amendment seemed to contradict the intention of the original legal change creating the discharge option. Not surprisingly, confusion resulted over the discharge provision (see Leon, 1977b). It was held by some commentators that a discharge avoided a conviction but created a criminal record (Swabey, 1973). However, a later court ruling was that a previous discharge did not constitute a criminal record when sentence was considered, although it was relevant in deciding whether to grant another discharge.²¹

In practice, the major effect of the discharge provision was to reduce the waiting period before an offender became eligible to apply for a pardon. This meant, with respect to the summary offense of simple possession, that a person awarded an absolute discharge had to wait one year, while a convicted person had to wait two years, before applying for a pardon. Upon indictment, the minimum waiting period was made five years.²²

Although the 1972 law did not relate the discharge option to any offense specifically, when it came into effect, federal drug prosecutors received a policy directive from the Department of Justice in Ottawa. This directive instructed prosecutors to recommend absolute or conditional discharge in all cases of first offense of simple possession of cannabis where there was not a previous criminal record or a concurrent conviction for another offense (Le Dain, 1973:955). There was some question, however, as to whether the onus was on the prosecutor or defense counsel to initiate the submission for a discharge, or whether the prosecutor fulfilled the intent of the directive simply by not opposing such a petition (Sommerfeld, 1974:7). The Le Dain commissioners also noted that initial reaction from the courts was not favorable towards applying discharge automatically in a particular type of case unless legislation clearly required it (1973:955).

Δ in judicial response { The discharge provision did not become an overly popular exercise of judicial discretion in cases of simple possession of cannabis, as is evident in Table 4. } While 12.8% received a discharge in 1972, when it was in force for the last six months, the proportion increased to only 16% in 1973. In comparison to 1971, the figures indicated a slight tendency for discharges to replace fines and suspended sentences. This trend was quite mild, compared to the dramatic shift from imprisonment and suspended sentences to fines in 1970 (see Figure 2). { It appears that the discharge provision had a relatively minor impact on sentencing practices at this time. }

Δ in enforcement { Between 1972 and 1973, arrests for cannabis offenses more than doubled, and the upward trend of possession convictions continued in 1974 to a total of 27,202 (see Table 3). By 1973, the assumption of responsibility by local police, rather than by the RCMP, for possession cases was generally established. } By the end of 1974, the RCMP drug squad had been expanded to 530 members who had primary responsibility for trafficking and other drug offenses.

Leg. change { 2 } The second step taken by lawmakers during this period of "Reduction of Penalties" was to introduce in late 1974 a bill (S-19) that would have placed cannabis in its own special section of the *Food and Drugs Act*. The provisions of Bill S-19 which would have affected the official response to simple possession were the following. First, prosecutors would have had no option but to proceed by way of summary conviction. Secondly, no jail sentences would have been permitted except in default of payment of a fine, and these would have been limited to three months for a first and six months for a subsequent offense. Thirdly, the maximum penalties would have been reduced to a fine of up to \$500 for a first offense and \$1,000 for a subsequent one. However, Bill S-19 never progressed to final reading.

"Malign neglect" (1975-1979)

When this period opened, it appeared that the Canadian government was on the verge of enacting "new" cannabis legislation. As discussed above, a possible amendment to place cannabis in the *Food and Drugs Act* had been voiced in 1968; such a proposal resembled the interim Le Dain recommendation (1970:249). The Senate had passed Bill S-19 after incorporating a provision for automatic pardon after a discharge. However, the *Narcotic Control Act*, substantively unaltered since 1969, continued to be in force in the phase of not-so-benign neglect, after Bill S-19 died on the order paper of Parliament in 1976.

Δ { What then was happening with regard to arrests and convictions in this era of "Malign Neglect" on the part of legislators? In 1975, for the first time, the total number of charges and convictions for cannabis declined (Table 3). The decrease in total convictions was attributable to the possession offense which showed a decline of 8% over 1974 figures. Increases were recorded in 1975 for both types of }

trafficking offenses. In 1976 convictions again rose, and in 1977 reached an all time high of 33,961 for simple possession. The figures dropped again somewhat in 1978, to 27,609.

Sentences for simple possession in 1975 to 1978 did not display any marked departure from trends exhibited in the prior period of penalty reduction (Table 4). There were slight decreases in the proportion of fines and gains in the proportion of discharges awarded. Trial judges continued to disagree that discharge should be routinely awarded in cannabis possession cases:

But it is quite another thing to appear to establish as a matter of policy that in all unremarkable cases of this sort an absolute or conditional discharge will be granted; to some that would almost amount to a derogation of and an invitation to break a law passed by Parliament and still in force and which can be repealed only by Parliament. The court should not do so inferentially by disregarding the factor of deterrence and rendering the legislation; so far as this offense is concerned, practically nugatory.²³

Fines remained the most common outcome. It does not appear that sentencing practices were being unduly affected by the existence of and debate over Bill S-19 at this time. In 1977, the actual number of persons sent to jail (1,317) was the largest in any one year since cannabis offenders began to appear before the courts. By 1978, the RCMP held about 240 writs of assistance under the *Narcotic Control Act* (Solomon, 1980).

The title for this period, "Malign Neglect," describes the inactivity of the parliamentary body while the police and courts continued to generate a high level of criminalization for cannabis use. The official response pattern was a continuation of the enforcement centred approach displayed throughout the preceding phases.

Conclusion

Despite its demise, the significance of Bill S-19 perhaps lay in it being the first piece of legislation in Canada framed specifically for cannabis. Since cannabis was added to the schedule of the *Narcotic Control Act* in 1923, virtually without parliamentary comment, it has been subject to all the same legal constraints as the opiates and cocaine. Conversely, although efforts to reduce penalties in 1969 and 1972 seemed to be principally in response to cannabis use, these changes applied equally in law to the possession of other illicit drugs in the *Narcotic Control Act* schedule as well. If a similar bill to S-19 is introduced and eventually passed in Parliament, a possibility raised early in 1980 by the Trudeau government, cannabis will be controlled

① Social
minimization
② Criminal
justice
③ Criminal
justice

① Social
② Political
③ Economic

① Criminal
② Social
③ Political
④ Party

① Social
② Political
③ Economic

Frequency of official somnolence	4 or 5
Less severe " "	4 or 5

ing). In illustrating the model with reference to criminalization for cannabis use, the Canadian data presented in the previous section of this chapter, and from other jurisdictions where relevant, will be referred to. First to be considered are official criminalization patterns and then those of social criminalization to which most efforts at legal change recently have been directed in Canada.

In Canada, there have been no changes in law as yet that would lessen criminalization through a reduction of the number of persons officially sanctioned for cannabis use. The Le Dain Commission's (1972) proposal for the removal of the prohibition against simple possession illustrates the form such a policy could take, as do the laws passed in 12 American states by 1979 regarding marijuana (see Single, 1980). Although these U.S. statutes vary somewhat in particulars, they have in common that possession of less than a specified amount of cannabis is a civil violation or a misdemeanor subject only to a relatively small fine. Early reports from Oregon (1974) and California (1977) indicate that such measures have been accompanied by immediate drops in the number of recorded offenses.²⁶ In Canada, it will be recalled from the earlier discussion, no reduction in the quantitative aspect of criminalization has been demonstrated but rather the opposite: the flow of persons subject to charge and conviction has increased steadily (with the exception of a small decline in 1975 and again in 1978) from 1965 up to the present. The extent of official criminalization is reflected in the figure of approximately 190,000 convictions for cannabis possession by 1978 (Table 3).

(There have been two legal changes in Canada that reflect diminished criminalization on the social dimension.) Reduction of penalties was made possible in 1969 by the *Narcotic Control Act* amendment and in 1972 by the introduction of absolute and conditional discharges in the *Criminal Code*. The first of these measures permitted possession to be treated as a summary offense which added a "fine only" as an alternative to imprisonment or a suspended sentence. The discharge provision widened the sentencing choices further. As was shown earlier (Table 4 and Figure 2), judges took advantage of both of these options, although fines have been a more popular exercise of judicial discretion than discharges. Also, a trend towards greater leniency in sentencing has been demonstrated consistently from 1969 to the present. Thus some reduction of the qualitative aspect of criminalization, as displayed in the nature of the sanction, has been occurring over time, in both law and practice.

The question that remains is whether the *total* amount of criminalization for cannabis use, as a function of both the number of persons subject to this official process and the sentences they receive, has been increasing or decreasing. Such a computation requires some form of rank ordering of the sentencing outcomes. By way of illustration, if the most serious consequences are associated with incarceration,

tion, by simply assigning a "2" value to this outcome and a "1" to all others, it is evident that total criminalization has been increasing. The actual number of persons imprisoned rose each year up to 1977, as had the number receiving other dispositions. The comparative harm of a custodial as compared to a non-custodial outcome is more obvious than the relative liability of an absolute discharge compared to a conditional one, or a fine compared to probation. Although the discharge is intended to be less criminalizing than a conviction, the extent to which this aim is achieved remains largely speculative (Leon, 1977b). Assigning a rank order to these non-custodial dispositions would seem premature.

Thus, as one aspect of the findings from the interviews with cannabis offenders presented in Chapters 5 and 6, variation in the consequences following official labeling, in relation to sentences received, shall be addressed. This will be a first step towards refining the concept of social criminalization in the model. While sentencing has grown increasingly complex as options multiply (Fox and O'Brien, 1975), the success of such efforts in reducing adverse consequences to the individual has seldom been examined empirically. Yet such an attempt is necessary if any cost-benefit assessment is to be possible.

Notes

CHAPTER 2: The Perspective

- 1 Major figures identified with the labeling perspective include Tannenbaum (1938), Lemert (1951), Garfinkel (1956), Kitsuse (1962), Becker (1963), Erikson (1962, 1966), Matza (1964), and Cicourel (1968). For critiques, defenses, and further elucidation of this perspective, see Goode (1975), Wellford (1975), Kitsuse and Spector (1975), Nettler (1974), and Hagan (1977).
- 2 Cannabis use has illustrated "illegal consumption" (Glaser, 1971: 32), "victimless crime" (Schur, 1965), "victimless vice" (Hagan, 1977:66), and the "significance of ban" (Matza, 1969:146). It has also received considerable ethnographic study, as in, for example, Goode (1970), Plant (1975), and Zimmerman and Wieder (1977).
- 3 R.S.C. 1970, c. N-1.
- 4 *Narcotic Control Act*, s. 10(3).
- 5 *Narcotic Control Act*, s. 10(4).
- 6 *Levitz v. Ryan* (1972), 9 C.C.C. (2d) 182 (Ont. C.A.).

- 7 *R. v. Wray* (1970), 4 C.C.C. 17, 11 C.R.N.S. 235.
Hogan v. the Queen (1975), 18 C.C.C. (2d) 65, 26 C.R.N.S. 207.
- 8 Bill S-19. An Act to amend the *Food and Drugs Act*, the *Narcotic Control Act*, and the *Criminal Code* (1974-75).
- 9 R.S.C. 1970, c. F-27.
- 10 Galliher and Walker (1977) document a similar lack of Congressional debate and interest during the enactment of cannabis legislation in the United States in 1937.
- 11 *R. v. Hauser et al.* (1979), 8 C.R. (3d) 89; 26 N.R. 541; 16 A.R. 97.
- 12 While the limitations of official record sources as measures of deviant *activity* have been well recognized (de Fleur, 1975; Giffen, 1976a), as indicators of the legal *response* to deviance such statistics may be more acceptable (Black, 1970). It is in the latter context that the official records compiled by the Bureau of Dangerous Drugs in Ottawa are utilized in this chapter. Even for this purpose, the accuracy of Canadian drug conviction statistics has not been established. The transformation of the Bureau's records from a manual card file system to computerized storage in 1977 enabled a retrospective estimate of 3% to 17% under-reporting of convictions to be made for any given year since 1968.
- 13 *Criminal Code*, s. 646(2).
- 14 *R. v. Lehrmann* (1968), 2 C.C.C. 198, at 200.
R. v. Adelman (1968), 3 C.C.C. 311 (B.C.A.A.).
- 15 *Narcotic Control Act*, s. 3(2).
- 16 Inspector G. Tomalty, officer in charge of RCMP drug enforcement, provided details in an interview with the ARF publication, *The Journal*, October 1972. *Crime Statistics* of 1972-73 also made a reference to this trend (p. xii).
- 17 Studies providing support for this interpretation include Black (1970), de Fleur (1975), Lindesmith (1965), and McDonald (1969).
- 18 *Criminal Code*, R.S.C. 1970, c. C-34, s. 662.1(1).
- 19 *Criminal Code*, s. 662.1(3).
- 20 *Criminal Records Act*, R.S.C. 1970, c.
- 21 *R. v. McLean* (1978), 7 C.R. (3d) (Ont. C.A.).

- 22 *Criminal Records Act*, s. 2(2), s. 2(3).
Although a pardon is often equated with some form of "erasure" of a criminal record, the actual stipulation is that the conviction be "vacated" and the federal records be kept separate from those of unpardoned criminals. Other than removing disqualification from federal government employment and other areas under federal jurisdiction, a pardon has limited applicability (Leon, 1977b:60; John Howard Society, 1978).
- 23 *R. v. Sampson* (1975), 23 C.C.C. (2d) 65 (Ont. C.A.).
- 24 Like the *Narcotic Control Act*, the *Food and Drugs Act* creates federal criminal offenses and provides the police with the same broad powers of search (s. 37, s. 45).
- 25 NORML Canada, formed in 1976 and affiliated with the U.S.-based National Organization for the Reform of Marijuana Laws, takes as its aim the repeal of the simple possession offense.
- 26 To place cannabis use beyond the reach of criminal sanction is problematic as long as any offenses related to cannabis continue in law. For instance, in Oregon, recorded offenses did not decline uniformly in all jurisdictions after legal changes there, but stayed high in some areas where police apparently laid a transportation charge instead of a possession one (Oregon, 1974).

Hardley Jones



Note ^{who} their study grp. is.!

3

Research Methods: The Crime and the Criminal

The object of the research was to determine the social effects of punishment on individual cannabis users. It is difficult to locate a representative sample of persons who have engaged in an illegal activity, and who are not already "captive" in an institution such as school or prison. Drug researchers (e.g. Goode, 1970; Plant, 1975) have noted that it is practically impossible to obtain a truly random sample of marijuana users in the population-at-large.)

To identify *criminalized* marijuana users presents a somewhat less formidable task, to the extent that such a group has at least been the subject of official record-keeping in some archive, and must make a public appearance in court. The method chosen for contacting subjects was a direct approach to those found guilty of possessing cannabis. A piloting phase at court proved this to be a feasible means for locating willing subjects. Other potential sources which were considered included official police records — unavailable for reasons of confidentiality — and self selection through advertisements, likely to be highly unrepresentative.

This study focused on internal comparison groups of similar offenders who received different sentences. While the inclusion of an external comparison group of unlabeled cannabis users might have been desirable to expand the explanatory value of the study, obtaining a truly matched group would have been highly problematic. Issues of confidentiality preclude access to official record sources of those arrested but not prosecuted successfully. Another possibility was the "snowball" method used in field studies of drug users (Goode, 1970; Plant, 1975) in which initial contacts volunteer to lead the researcher to other subjects. Reservations based on the pilot period, which were later borne out by the actual sampling, were that naive users and the older more "respectable" ones preferred not to tell their friends about the court experience. This would have limited the willingness of such subjects to identify friends with no official record. At the other extreme, some of the heaviest users reported having no friends who had *not* been arrested for cannabis. Thus, a truly representative comparison group would have been difficult, perhaps impossible, to achieve by the snowball method. Another possibility would have been to select a sub-sample

from a general population survey, matching the offender sample on the basis of demographic factors. No Toronto survey was available at that time, and even if there had been, the identities of respondents would have had to be known in order for repeated contact, thus breaching the usual conditions of anonymity. However, while the lack of an external comparison group may impose some limitations on the conclusions, examination of the social effects of punishment associated with differential sentencing does provide insight into the criminalization process.

This chapter introduces the offender group and provides a backdrop for the discussion, in the following chapters, of becoming a cannabis criminal and the individual consequences of criminalization. The opening section of the chapter describes the operational definition of a "first offender," and the manner in which such persons were selected for inclusion in the sample. The representativeness of the sample is addressed next, both with respect to cannabis offenders in Toronto and elsewhere and with regard to the sentence received. Finally, details about the sorts of persons who are sentenced for this offense, their drug use patterns, and the legal features of their cases are presented.

SAMPLE SELECTION: "First Offenders"

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The sample consists of 95 persons sentenced for the offense of simple possession during an 11-week period from July to September of 1974. The site for sample selection was the Provincial Court of Metropolitan Toronto. At that time, virtually the entire daily caseload of one courtroom was devoted to cannabis matters. Since a total of 433 cases received sentences for possession during the field period, the 95 cases represent a 22% sample of this group of offenders.

*Memo
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Daily court sessions were attended by two interviewers, one male and one female, both in their late twenties. They alternately followed the first and then next potential candidate out of court immediately after final disposition had occurred. The selection was in a random manner without reference to sentence received. A case was excluded where a prior record of conviction for an adult criminal offense had been submitted in court, or the candidate acknowledged such a record when first approached.¹ In the event of an unsuccessful contact, the interviewer returned to court and pursued the next possible eligible subject. Of those approached, there were 26 refusals, 23 were considered ineligible (due to a prior conviction or in one case a prior interview with the other field worker), and 95 interviews were completed. Thus out of 144 attempts, two in three were successful; the refusal rate was 21% of those who qualified.

Ninety of the sample members were interviewed immediately, in the environs of the court. Interviews with the remaining five subjects took place elsewhere within one week. The duration of the interview ranged from half an hour to nearly two hours, but on the average about one hour. At the completion of the post-trial interview, the topic of a follow-up interview was broached and additional personal information requested for tracing purposes (Erickson and Salutin, 1976; 1977). Ninety percent of the original 95 subjects were re-interviewed after one year.

Since the aim of the study was to identify the nature and extent of any social consequences following from the designation of a criminal label, it was necessary to control for the effects of prior record. This was done by excluding from the sample all those who said they had previously been convicted of an adult criminal offense. But, as the difficulties in establishing a standard indicator of "recidivism" have illustrated (Hawkins et al., 1977), the definition of a "first offender" likewise is problematic. Aim of study

There is a whole spectrum of potential justice system involvement that may occur without the registering of an official finding of guilt. A person may be questioned, arrested, released, charged, prosecuted, even acquitted — all steps falling short of conviction. The term "criminal record" has been used in reference to a police record of arrest only (e.g. Grupp, 1971). But the more conventional and classical definition restricts usage of the term to that following conviction for a criminal offense (Martin and Webster, 1971).² In this study, the decision was made to draw the line at conviction. This was because the adverse effects of criminalization are thought to increase in proportion to the intensity of the official response, with the greatest impact being the public designation of the criminal label (Lemert, 1951:320; Becker, 1963:31; Garfinkel, 1956). This is not to deny that negative consequences may result from any form of legal history antecedent to conviction (Schwartz and Skolnick, 1962; Palys, 1976).

In refining the concept of a first offender, a self-admitted juvenile record was not considered to affect one's criminal or non-criminal status as an adult. Since the juvenile court record is confidential and proceedings are not public, with some exceptions³ a finding of delinquency does not constitute a finding of guilt equivalent to that of conviction for an adult criminal offense (see Albright and Dent, 1978). Twenty-four percent of the sample acknowledged appearing in juvenile court on at least one occasion.⁴

As an adult, various types of contacts with the criminal justice system are possible. The computerization of criminal history information in the Canadian Police Information Centre (CPIC)

provides rapid retrieval of such information. Charges pending, acquittal, or charges being withdrawn or dismissed can all produce an official record of involvement but not of guilt. The disposition option of discharge is ambiguous since it is not technically a conviction, but does register a finding of guilt and creates a criminal record that, in some aspects, is indistinguishable from that obtained by conviction (Swabey, 1973; Leon, 1977b). Persons who reported all these variants of legal history short of conviction were included in the sample. As adults, 13% had prior contacts for cannabis offenses, 2% for other illicit drugs, and 14% for non-drug related criminal matters. In combination, 74% reported no kind of record, while 10% had received discharges, and 16% had been charged before but not found guilty. Thus, some first offenders in our sample were more "pure" (with less serious records) than others, but all 95 shared the property of reporting no prior convictions for an adult criminal offense.

REPRESENTATIVENESS OF SAMPLE

Was the Sample Representative of Cannabis Offenders Generally?

Since the sample was chosen over an 11-week period in the summer of 1974, it is important to know how typical this period was and how well the sample reflected the basic characteristics of all Metropolitan Toronto cannabis offenders. Police statistics (see Appendix A) show a decline in total possession offenses from 1973 to 1975, then a small rise in 1976. The total number of cannabis offenses in 1974 was 5,475, of which 4,949 (90%) were for simple possession. Looking at monthly variation, the decrease in the number of offenses appears to have begun towards the end of 1974, after the field period was complete. This was the appropriate year for comparison since all but one of the 95 were charged as well as tried in 1974.

The sex and age distribution for all cannabis possession offenders in Metropolitan Toronto remained predominantly male and youthful from 1973 to 1976. Of the total 1974 figure of 4,949, 87% were male and 13% female. This compares well with the 90% male and 10% female composition of the sample. Of all Toronto offenders (excluding juveniles), 68% were age 21 or younger, compared with 65% of the sample. The sample selected, therefore, had a sex and age distribution in agreement with all the subjects of cannabis possession cases prosecuted in this jurisdiction during 1974.

In 1974, there were 27,202 cannabis possession "convictions" recorded in Canada, of which 10,290 were in Ontario.⁵ The official record source, the Bureau of Dangerous Drugs, does not prepare a detailed provincial breakdown of offense type by sex and

age. However, the *Narcotic Control Act* total, of which the bulk were cannabis *possession* cases, showed at least 90% of offenders to be male. Nationally, 53% of cannabis possession offenders were under 21 years, not unlike the 58% of the sample. Thus, the sample was similar to the provincial and national picture with regard to sex and age composition.)

How Representative Was the Sample with Respect to Sentence?

Potential subjects were chosen in a random way without reference to outcome. The sentences awarded for all possession cases during the 11-week sampling period were extracted from a public file kept at the courthouse. When the outcomes of the 95 sampled cases were compared to the sentences of the 433 total court cases of cannabis possession offenders receiving final disposition in the study period, the result was a very high degree of correspondence, as shown in Table 5. The difference between the two distributions for each of the outcomes was always less than 3%. Thus despite its restriction to first offenders, the sample may be taken as representative of all those sentenced for simple possession of cannabis in that interval.)

It may perhaps seem surprising that greater sentencing discrepancy between first offenders and a total group including recidivists was not displayed. But observation of the court proceedings had suggested that prior record would not weigh heavily in sentencing for two reasons.) The first was that the existence of such a record was

TABLE 5

*Distribution of Sentences for the Sample and
for All Cases in the Sampling Period*

Sentence	The Sample		All Cases	
	No.	%	No.	%
Discharge				
Absolute	40	42.1	192	44.3
Conditional	32	33.7	134	30.9
Conviction				
Fine only	21	22.1	92	21.2
Fine plus probation	2	2.1	11	2.5
Suspended sentence plus probation	0	—	4	1.0
Total	95	100.0	433	99.9

frequently not submitted in court by the crown prosecutor, for reasons not apparent to the observers. This was illustrated by the 22 persons (and others in the pilot period) for whom no record had been entered in court but who freely admitted to one when questioned afterwards. Secondly, even when a prior record was entered by the crown, it was observed that some judges disregarded any record while others considered only a drug record relevant (Erickson, 1975). No consistent policy of more severe sentencing for those with a record was observed, although some judges appeared to adopt such a stance on occasion.

Sentences awarded to persons in the Toronto sample were considerably more lenient than those given on a national scale in 1974. During that year in Canada, 8% of those found guilty of simple possession of cannabis received an absolute discharge, 12% a conditional one, while 69% were fined and the balance received a suspended sentence or imprisonment, whereas three-quarters of the Toronto sample received some form of discharge. The tradition was for Ontario judges to be less severe than judges elsewhere in Canada in their drug-sentencing behavior (Cook, 1970; Whealy, 1970) and less punitive in their attitudes to drug offenses (Leon, 1976). Nor could Toronto patterns be said to have been typical of Ontario, where slightly over half of such offenders received discharges in 1974. The suggestion is that this group of offenders, having been processed in the more "lenient" judicial atmosphere of Toronto, represents the lower or more minimal point of a scale of criminalization consequences associated with sentence, when compared to offenders in the rest of the provinces or in the nation as a whole.

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SAMPLE CHARACTERISTICS

Personal Attributes: What sort of people go to court?

The sample members were predominantly young single males with incomplete secondary schooling. The mean age of the 85 men and 10 women was 20.8 years. Two-thirds of the sample fell in the 16 to 21 age range, and five subjects were over 30. The large majority (72%) of those interviewed were employed and 17% were students. The balance of 12% were unemployed but looking for work, or doing "nothing" (e.g. staying home, planning to travel). In Ontario, the legal school-leaving age is 16 and either grade 12 or grade 13 marks the graduation from secondary education, depending on the student's program. Of the sample, 45% had attained grade 11 or less and 34% had grade 12 or 13. For the remainder who had undertaken extra-secondary schooling, 8% had participated in a community college or other technical training program and 13% had attended university. Of those who were employed or had ever had a regular job (N=71), 25% had held their most recent position for a year or more,

18% for seven months to a year, and 56% had worked six months or less in their most recent one. The most common living situation was for the subject to live at home with parents (43%), followed by shared accomodation (22%), living alone (18%), and with a spouse or partner (17%). Seven sample members had children. Fathers' occupational category (Pineo and Porter, 1967) was classified as professional-managerial for 40% of respondents, clerical-sales for 12%, skilled or semi-skilled for 40%, and the balance unskilled or unknown.⁷

It is important to know whether any of these personal or "extra-legal" attributes were differentially associated with a sentence category. Since the researcher had no experimental control over case outcome, it was possible that judges could have tended to favor a certain type of person for a particular sentence. Such a bias would have created a problem in the analysis of subsequent consequences. Any exhibited differences in social effects could have been a result of variation in pre-existing personal attributes and only spuriously related to sentence.

In Table 6, some personal characteristics of the sample are shown in relation to sentence received. A chi-square test was done for each personal attribute compared to sentence outcome; none was significant. Any of the observed differences in sentence, in relation to the extra-legal variables, could have occurred by chance.⁸

Of course, judges were often not in possession of all this personal information about each case before them. Sex was the only readily observed characteristic, and to some extent, age. The other items could have been introduced by the lawyer, if one appeared on behalf of the accused, or as a result of the judge's questioning of the accused, or not at all. The observation in court indicated that personal details such as living situation and employment were routinely elicited by some of the 13 presiding judges. Due to this variation in approach by different judges, any sentencing differences that might have been accounted for by the personal attributes of offenders tended to be minimized. The result was not unlike random assignment of sentences on these extra-legal dimensions.

Legal Attributes: What kinds of cases are prosecuted?

Judges are more consistently aware of the legal characteristics of the case before them than the extra-legal ones. These are presented during the trial by the crown prosecutor on the basis of the police information. The 95 cases in the sample were typified by a plea of guilty to a single charge of possessing a small amount of marijuana, and were resolved within one or two appearances without representation by private defense counsel.

To consider the legal profile in more detail, the only charge was of possession of one form of cannabis — e.g. marijuana or hashish

plead
guilty

TABLE 6
Sentence by Personal Attributes

	Sentence			
	Absolute Discharge	Conditional Discharge	Fine	Total N (100%)
	%	%	%	
SEX				
Male	41	32	27	(85)
Female	50	50	—	(10)
AGE				
16 to 18	40	50	10	(30)
19 to 21	44	28	28	(32)
22 or more	42	24	33	(33)
CURRENT POSITION				
Employed	34	38	28	(68)
School	51	31	19	(16)
Other (N)	(9)	(1)	(1)	(11)
EDUCATION				
Grade 11 or less	36	43	21	(42)
Grade 12 or 13	53	31	16	(32)
Extra Secondary	40	20	40	(20)
Observation missing (N)			(1)	(1)
LIVING SITUATION				
Parents	44	37	20	(41)
Spouse/Partner	50	19	31	(16)
Shared	27	48	24	(21)
Alone	47	24	29	(17)
LENGTH OF MOST RECENT JOB				
6 months or less	27	38	35	(40)
7 to 12 months	54	38	8	(13)
More than 12 months	39	33	28	(18)
Not applicable (N)	(15)	(6)	(3)	(24)

— in 80 cases. In the remaining 15 cases, added charges such as possession of a second form of cannabis (five cases) or another illicit drug (three cases), possession for the purpose of trafficking (six cases), or cultivation (one case), were withdrawn by the crown and the finding of guilt was on a simple possession charge. Only two of the 95 accused pleaded “not guilty.” The accused was charged alone in 68% of the cases and jointly in 32%. The cannabis substance which formed the basis of the charge was solely marijuana in 81%, hashish in 14%, and a

Cannabis sativa plant or plants in 5%.⁹ The weight of the substance was 14 grams or less (half an ounce) in 74% of the cases, and 29 grams or less in 89% of the total (excluding plants).

Thirty-two percent of the sample had retained their own lawyer. These tended to be the cases in which a more serious additional charge and a larger amount of cannabis were involved.¹⁰ Others had no legal representation or were represented by duty counsel.¹¹ Performance of the duty counsel role varied considerably. Only those cases in which the duty counsel was observed to make some submission on behalf of the subject were counted as "represented" by duty counsel; this occurred in 27% of the cases. The balance, 41%, were categorized as unrepresented in court.

The accused appearing for the first time on a particular charge may plead, be tried, and sentenced that day, or be remanded one or more times. Of the sample, 48% received their sentence on first appearance, 32% on their second, and 20% made three or more trips to court before final disposition (the largest number of visits being eight). These delays were generally for arrangements to be made for a lawyer or to wait for a certificate of analysis;¹² no pre-sentence report was requested by the judge for any sample member. The preliminary field work had shown that each day's court list was a mixture of new cases, remands, and trials, heard in an interchangeable order. Thus any tendency towards selection of sample cases from the earlier portion of the day's proceedings did not lead to any systematic bias in the legal nature of the case.

The distribution of sentences within categories of legal attributes was examined (see Table 7) and tested for significance with the chi-square statistic. Only the relationship between legal representation and sentencing outcome was significant. Those who were represented either by their own lawyer or spoken for by duty counsel were much more likely to receive an absolute discharge than those who went unrepresented; individuals in the latter group were most likely to be convicted and fined. While other trends may be observed — notably that those with more serious added charges, possessing larger amounts of cannabis, and appearing more than once on the charge tended to receive more severe sentences — no relationships were of such a magnitude that they could not have occurred by chance. Although 10% of the sample had prior records of discharge, these were not consistently introduced in court and therefore this attribute has been excluded from the presentation in Table 7.

The presiding judge may, too, be considered a legal feature of the case (Hogarth, 1971; Perry, 1977). Thirteen judges sat in the drug court during the sampling period, and at least one case from each is found in the sample. The distribution of sentence by judge for all cases in the field period and for the sample is shown in Table 8.

Counsel

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discretions
of
judge
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sentences

Att.'s
role

TABLE 7
Sentence by Legal Attributes

	Absolute Discharge	Conditional Discharge	Fine	Total N (100%)
	%	%	%	
INITIAL CHARGE(S)				
One only	46	31	24	(80)
More than one	20	47	33	(15)
GRAMS				
1 to 3	38	48	14	(29)
4 to 14	45	34	21	(38)
15 or more	42	21	37	(21)
Unspecified (N)	(2)		(2)	(4)
FORM OF CANNABIS				
Marijuana	42	35	23	(77)
Other	44	28	28	(18)
LEGAL REPRESENTATION*				
Own lawyer	53	20	27	(30)
Duty counsel	50	46	4	(26)
None	28	36	36	(39)
TYPE OF CHARGE				
Single (alone)	37	38	25	(65)
Joint (with others)	53	23	23	(30)
APPEARANCES ON CHARGE				
One	52	35	13	(46)
Two	33	33	33	(30)
Three or more	32	32	37	(19)

* Chi-square statistically significant at .01 level.

Large sentencing differences for the offense of simple possession were evident among judges, and the sample cases reflected the typical pattern for each judge. These data reflect the general trend observed by Hogarth (1971) for judges to vary greatly in their practices while being individually uniform. The data also lend empirical support for the inconsistency of the judicial reaction to hypothetical drug cases presented in Le Dain (1972:246).

Variation in sentences according to judge contributed to an approximation of randomness in the distribution of both personal and legal attributes among sentence categories in the sample of cannabis offenders. The judicial discretion exercised in sentencing them il-

TABLE 8
*Sentence by Judge for Total Cases
 in Sample Period and for Sample Cases*

Judge	Sentence — Total Cases			Total N (100%)
	Absolute Discharge	Conditional Discharge	Fine	
A	80	7	13	(60)
B	74	12	15	(95)
C	7	56	37	(108)
D	0	100	0	(3)
E	84	16	0	(25)
F	0	75	25	(20)
G	0	75	25	(4)
H	14	57	29	(7)
I	0	21	79	(14)
J	10	29	62	(21)
K	95	5	0	(21)
L	62	6	32	(34)
M	5	86	9	(21)
Total				(433)

Judge	Sentence — Sample Cases			Total N (100%)
	Absolute Discharge	Conditional Discharge	Fine	
A	75	8	17	(12)
B	81	15	4	(26)
C	0	58	42	(24)
D	0	100	0	(1)
E	50	50	0	(4)
F	0	100	0	(2)
G	0	0	100	(1)
H	0	68	33	(3)
I	0	0	100	(1)
J	0	0	100	(5)
K	67	33	0	(6)
L	67	0	33	(6)
M	0	100	0	(4)
Total				(95)

illustrates the point that "it is quite possible to have a widespread disparity without *systematic* bias (Scheingold, 1977:266; emphasis in original).

Cannabis Use Attributes: What kind of users get caught?

The sample members were asked about their prior involvement with the drug. Employing the Le Dain classification of cannabis use levels (1972:194), 13%
= "irreg."
users
87%
= "regular"
"heavy" most of the sample members (87%) were in the regular use category of smoking more than once a month on the average in the year preceding the court appearance. The other 13% of the sample were considered irregular users of various types. These included occasional users (no more than once a month on the average: six cases), experimental users (once or twice: four cases), and non-users (never or not at all in the past year: one case of each).¹³ The regular users were more likely to be "heavy" users¹⁴ (twice a week to daily — 73% of the 95) than "moderate" users (once a week — 14% of the total).

Age
started When asked their age when they first tried cannabis, 27% of the sample responded that they had been 13 years or younger, 44% that they were aged 14 to 16, and the balance reported 17 or older at the time of first use. Seventy-six percent had commenced use more than three years before their official labeling as an offender.

The need to obtain a steady supply of the drug also characterizes the regular user (Le Dain, 1972:195). Nine subjects said they had never purchased cannabis and another nine reported only one buying experience. Of the remainder of the sample who had purchased the drug more often (N=77), 71% reported buying it at least once a month. Thus the general profile of the sample is of a group of fairly heavy and regular cannabis users with a minority of irregular and more naive users.

Summary

In review, the sample consisted of 95 "first offenders" who were sentenced for simple possession of cannabis in 1974. Grounds for inclusion were the self-report of no prior convictions, and a later official record check of reliability showed a 7% under-reporting of this form of criminal history.¹⁵ Respondents were first interviewed at the time of court appearance and sentencing, and 90% were successfully re-interviewed one year later. In regard to age and sex composition — predominantly young and male — the sample was found to be representative of offenders generally in Metropolitan Toronto, Ontario, and Canada. The sentences imposed, while corresponding highly with all those awarded for simple possession in Toronto during the sampling period, were less severe than the national pattern for the same year. The personal attributes of the offenders and their legal case characteristics were described in some detail and, except for

legal representation, were found to be unrelated to sentence received. The presiding judge appeared to be the most important determinant of the outcome: absolute discharge, conditional discharge, or conviction with fine. The profile of the respondents as cannabis consumers revealed a majority were fairly regular, long-term users of twice weekly or more.

Notes

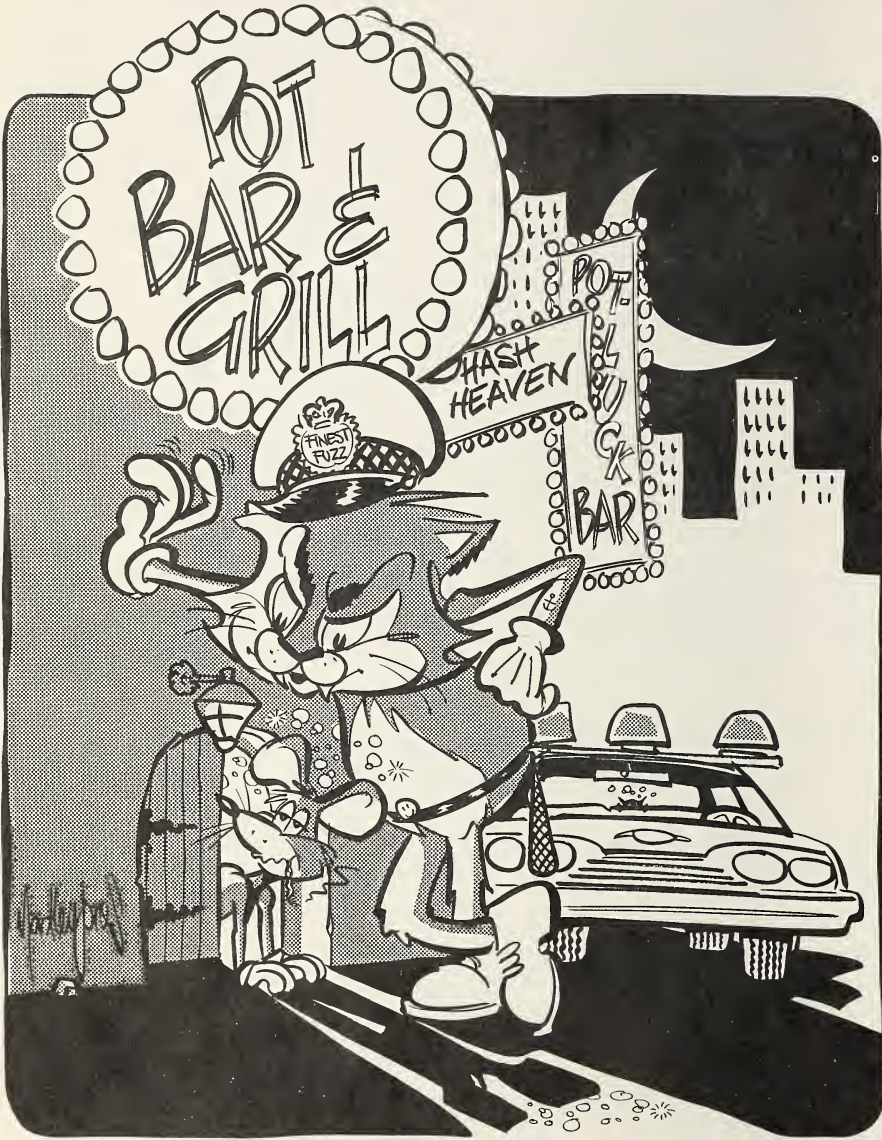
CHAPTER 3: Research Methods

- 1 For the purposes of sample selection in this study, a reported conviction for an offense involving driving or alcohol was regarded as "non-criminal." This was done because related offenses are found in Canadian federal, provincial, and municipal statute books, and those interviewed were often uncertain as to the actual legal infraction they had committed. Some precedent was found in West's (1973) exclusion of traffic offenses in defining the nature of conviction, and the labeling literature generally emphasizes the importance of criminal conviction rather than more minor law-breaking.
- 2 An international survey of the statutory legal consequences of conviction makes the point that the U.S. is unusual in attaching significance to an arrest record (Damaska, 1968).
- 3 *Morris v. the Queen* (1978), 43 C.C.C. (2d) 129.
- 4 A juvenile in Ontario is someone aged 15 or less. The sample of adult cannabis offenders does not appear to have been unusually delinquent when compared to West's cohort study in which 24.8% had made a juvenile court appearance (1973:3).
- 5 Source: Bureau of Dangerous Drugs, Health Protection Branch, Health and Welfare Canada. Discharges are included in its conviction figures.
- 6 Source: Bureau of Dangerous Drugs, Health Protection Branch, Health and Welfare Canada.
- 7 The socioeconomic status of respondents' family backgrounds, a relatively stable characteristic, was ascertained at the final interview. See Chapter 6, Table 28. (For characteristics of cannabis offenders elsewhere, see Crow, 1973; Morton et al., 1968; Shafer, 1972; Johnson et al., 1977.)

- 8 The analysis was repeated for males only and again no significant differences emerged. The extra-legal attribute of race was not included since less than 5% of the sample was "non-white" (see Hagan, 1974).
∴ white
- 9 While five of the 95 cases involved plants, in only one had an actual charge of cultivation been laid.
- 10 Further analysis of the interrelationships between legal representation, other case attributes, and sentence has been conducted for a forthcoming paper (Erickson and Leon). Judges were categorized as "less punitive" or "more punitive" according to whether an absolute discharge or other penalty was predominant in their sentencing patterns over the entire 11-week field period. Multi-variate analysis showed that for "less punitive" judges, having a lawyer or duty counsel speak on behalf of the accused was the most important single factor affecting outcome when all other legal and extra-legal variables were controlled. However, for "more punitive" judges, the weight of the cannabis substance had the greatest effect on sentence when all other factors were held constant.
- 11 The duty counsel role is a rotating position occupied by a lawyer paid by Legal Aid, who advises unrepresented defendants (*Legal Aid Act*, Stats. Ont., 1966, c80).
- 12 Federal analysts, appointed under the *Food and Drugs Act* and the *Narcotic Control Act*, provide certificates of proof that the substance forming the basis of the charge is actually that prohibited drug.
- 13 The "never" user said the drug had been planted on him and the other non-user, who admitted previous use but not in the year before arrest, was in possession of one "decorative" plant.
- 14 More recent definitions of the "heavy" level of cannabis use apply it to daily or almost daily use (Johnston, 1980, Fehr et al., 1980).
- 15 After the follow-up phase was completed, the adult criminal record history reported by the subjects at the time of the outcome of their cannabis possession case was compared to that shown in the official record for each individual. It was found that two subjects had a prior conviction for "theft under" and two others had been convicted for "causing a disturbance." The latter is a minor *Criminal Code* infraction which includes drunkenness, and these two subjects had reported having a record for drinking

(see footnote 1 above). These incidents had occurred two years or more before the court appearance for cannabis possession. Two other respondents, both men over 30, had prior convictions at least seven years earlier for "victimless" crimes (one involving gambling and the other, homosexual acts). In addition, one subject had received an unreported discharge for attempted theft. The accounts of the others corresponded to their official files. The 7% under-reporting of criminal history compares favorably with that of narcotic addicts (Ball, 1967), and enhances confidence in the data on measures that cannot be verified from other sources.

Moreover, the integrity of the sample — i.e. it was shown to contain only those without a prior conviction for a drug offense — was sustained.



Becoming a Cannabis Criminal

The process of "becoming a cannabis criminal" is considered, here, from the viewpoint of the offender: How does one get caught? How do the police behave? What happens at court? The object of this chapter is to impart the flavor of being on the "receiving end" of the criminal justice machinery. The offenders' subjective experiences provide one perspective of the effect of the activation of the drug law against users of cannabis. The subjects' descriptions and anecdotes about their experiences, and our own observations in court, were detailed in lengthy field notes at the time of the interviews.

A flow chart of the process of becoming a labeled offender, from the initial contact with the police to the culmination of sentencing, is presented in Figure 3. As the elaboration below will show, the shared experience of being arrested and processed for cannabis use followed different channels and involved a variety of circumstances.

CIRCUMSTANCES OF ARREST: How Do People Get Caught?

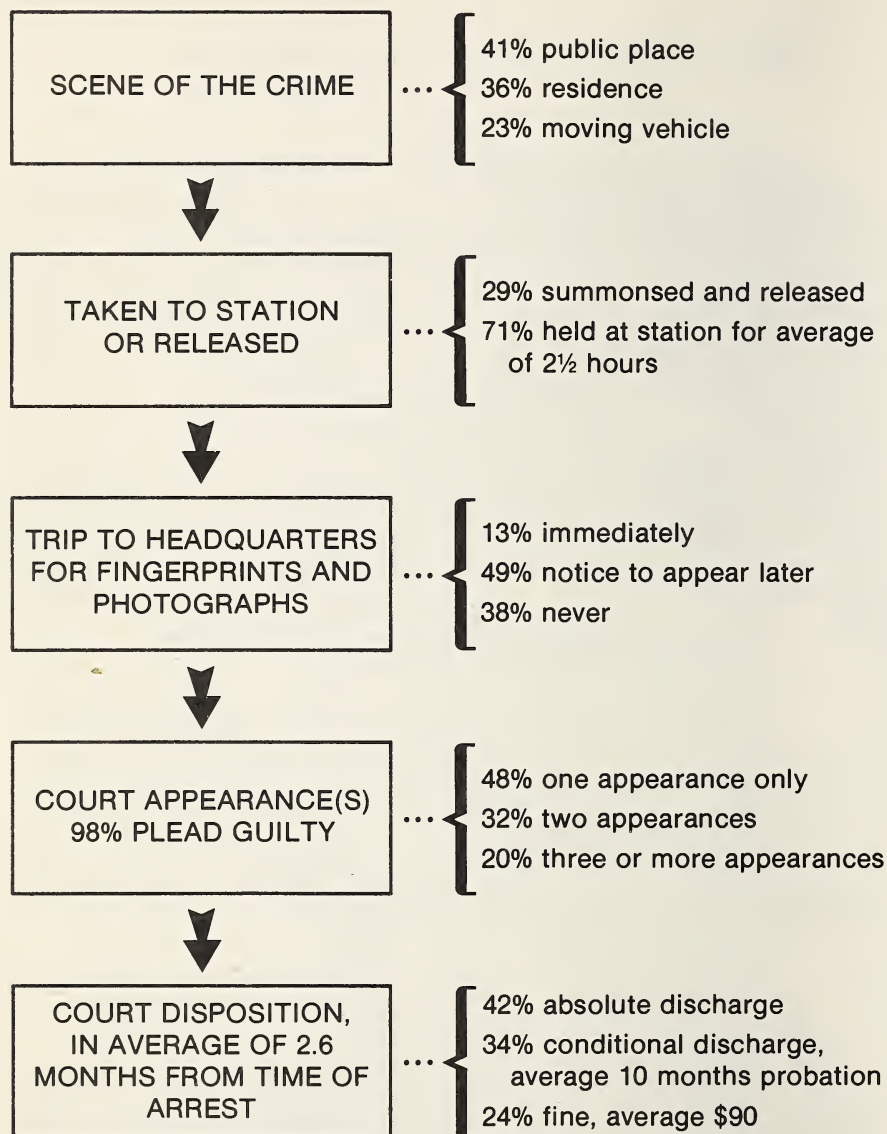
The drug must be detected and a charge laid before a person joins the faceless multitude of "official statistics." While most users do not receive police attention, an atypical minority do (Le Dain, 1972; Johnson et al., 1977). Prior research on cannabis arrest patterns has been based principally on official police versions of the event which characterize it as a coincidental by-product of routine police investigation (e.g. Morton et al., 1968; Johnson and Bogomolny, 1972). The Le Dain Commission also concluded:

Many, if not most, of the cases of simple possession are uncovered by accident in the course of some other aspect of law enforcement . . . If people are careful not to be in possession in public places, they are relatively immune from detection . . . The use of cannabis in private is, generally speaking, beyond the effective reach of law enforcement.

(Le Dain, 1972: 289-290)

The offender's account provides an equally important but neglected

FIGURE 3

Flow Chart of the Enforcement Process

source of knowledge about drug arrest practices. The nature of the arrest incident will first be examined.

Routine auto or street checks by police were not uncommon for this group of cannabis users (with 62% reporting at least one such experience) but only two subjects acknowledged that cannabis had ever been found and confiscated without a charge. Thus, first detection resulted in arrest for the majority of the respondents. Nearly half of the incidents (48%) occurred in the 4 p.m. to midnight shift. The site of apprehension was most frequently a public place (41%),¹ followed by a residence (36%), or an automobile being driven on a public thoroughfare (23%). Although the typical arrest was handled by two officers, in one-fifth of cases four or more police were involved. Police were more likely to be in plainclothes rather than in uniform (52% compared to 38%) and, in the balance, both types of officer were present. In half the arrests, the drug was on the person of the accused and in another 5%, was found nearby. In the remainder, a search of a car or residence produced the necessary evidence, for 35% when the accused was present and for 8% in his or her absence.² One subject, a declared non-user, said the drug was planted on him.³

It has been established that in victimless crimes (i.e. those characterized by voluntary though illegal activity conducted in private), the police take the initiative in enforcing laws because of the absence of a complainant (Schur, 1965; Skolnick, 1966; Black and Reiss, 1970). Perhaps the classic example of pro-active enforcement is the "raid" resulting from undercover investigation. It is not known, however, to what extent the actions of the accused may play a part in attracting police suspicion in more public settings. There is also the possibility that a chance element may contribute when a non-drug related matter is being investigated. Furthermore, the possibility that the police may engage in "stop and search" activity in a deliberate effort to uncover illicit drugs must be considered.

The 95 cannabis offender subjects were asked to describe the situation and their actions just prior to the police intervention. These accounts enabled a classification of four basic types of arrest circumstances. They were termed, in order of frequency, "deliberate drug-seeking" (35%), "general suspicion" (30%), "coincidental" (19%), and "self-victimization" (17%).

The most common type of arrest, termed "deliberate drug-seeking," was manifested by the search of a residence with the express purpose of locating drugs (22 cases) and by the stake-out investigation of public settings where drugs seemed likely to be found (13 cases). Some examples are:

The police knocked at the door and showed a warrant. They found the ounce right away and

*How
grp.
gt
Caught*

didn't bother searching anymore. One cop said that someone who had been busted supplied our address.

...

Two plainclothesmen with a search warrant showed up at my apartment. Apparently a girl who lived there previously had been a big dealer, but the police didn't seem too clear on just who was supposed to be at the address. So they searched anyway and as luck would have it, I had some in the place.

...

We had just come out of a bar and got into my car. I took a few moments to put a tape on, and the police car pulled up behind so we couldn't get out and then they searched the car and me. The cops told me at the station that that tavern was a popular place for kids to smoke and they'd go back there that night.

It is possible that in such instances the police were hoping to discover other types of drugs, or quantities large enough to warrant trafficking charges, but the activity was nonetheless drug-seeking and the product was a cannabis possession discharge or conviction. It was not possible to ascertain whether a warrant was shown in residence cases since subjects often reported they had been too upset to notice or ask for one. Two respondents did report requesting to see a warrant but the police did not produce one

The second most frequent arrest occurrence was typified as "general suspicion" because no motive was apparent beyond the routine exercise of police discretion in patrol situations. The "stop and search" approach was directed towards persons in public locations either in a vehicle (15 cases) or on foot (13 cases). Some illustrations are:

I was in a car with two of my friends. The cop pulled us over and could smell it in the car, though we had finished [smoking] some time before. The cop said you can hand it over or go to the station and it'll be hard on you, so I handed it over.

...

I was waiting for a bus and started thumbing. Two cops going the other way made a U-turn and came back. They checked my pockets and found it.

...

I was going home on my bicycle about 3 a.m. Two cops pulled me over . . . I had even stopped at the last light. First they asked me if the bike was stolen, then if I had any dope. I said no — they found it in my pocket.

The police in these circumstances were not necessarily attempting to find drug offenses, but neither can it be construed that a definite infraction or the visibility of the drug had prompted the intervention. The precipitating factors in this category of arrest therefore must remain uncertain.

In contrast, the third grouping of responses, the "coincidental," was characterized by the explicit investigation of some matter unrelated to drugs. Eighteen such cases were found in the sample, including these examples:

I was driving in my car and was about to roll a joint when the cops pulled me over. They said my trunk was opened. As they came up, they saw me try to put the bag under me.

...

[Subject was with several people having a picnic in a ravine. One person had a pellet gun, which two other people walking by could have seen and reported to the police. Several police cars arrived.] In the excitement, I forgot what I had in my pocket, then remembered suddenly and must have made some motion to the pocket it was in, because one of the cops came straight over and reached right into the pocket with the leaves.

While the contact with the police was not prompted by an interest in drugs, the possession charge which resulted showed that the police did not overlook the opportunity to lay a charge when it arose.

Almost as frequent as the coincidental circumstances of arrest were those of "self-victimization," accounting for 16 cases among the respondents. In this category were placed accounts of those "caught in the act" through their injudicious choice of a setting for using the drug. In three cases a citizen complaint (typically a neighbor or passerby) brought the police and in 13 arrests the officers happened to be in the vicinity. Chagrin was often displayed by these "conspicuous consumers," such as:

I was walking home from a pub, smoking a joint. These two cops suddenly stopped me — they must have smelled it as I walked by.

...

We sat down on a bench in the Mall and a stranger offered us a joint and we passed it around. These guys nearby in army jackets turned out to be cops and searched us.

Although in these cases the police action was directed towards drugs, the user's indiscreet behavior was a crucial factor in detection.

Disputes accidental nature

This description of the circumstances of cannabis arrests from the offender's perspective disputes the conventional wisdom about the accidental nature of most such arrests (e.g. Le Dain, 1972; Johnson et al., 1977; Johnson and Bogomolny, 1972; Goode, 1970; Johnson, 1973; Morton et al., 1968). Only one-fifth of the cases in this study could be placed, without reservation, in the "coincidental" category involving an explicitly *non-drug* investigation. In another 30% of arrests, no overt reason was apparent for the intervention — drugs or otherwise. In about half of all arrests, then, the police clearly took action for the purpose of drug law enforcement. In some of these instances, the offenders' indiscretions precipitated the intervention, but twice as often the investigation of residences on the basis of tips received, and surveillance tactics of areas frequented by young people, were used to actively seek out users. To conclude that use "in private is, generally speaking, beyond the effective reach of law enforcement" (Le Dain, 1972:289) may be true with respect to the vast majority of undetected use incidents. But, considering that 36% of the 95 sample cases resulted from detection of the drug in private residences, this statement does not accurately reflect the reality of the application of the law.⁴

Do agree?

Reasons for police pro-active

The explanation for the unexpectedly high level of police pro-activity against drug users may be found in several interrelated factors. It has been argued that a basic feature of Canada's legal institution is the relative preference given to state agents over the public in matters pertaining to individual rights and civil liberties (Hagan and Leon, 1978). This is illustrated by the admissibility of "illegally" obtained evidence in Canadian courts (Leon, 1977c), as contrasted to the exclusionary rule in the U.S. This fundamental "crime control" orientation is combined with special powers of search and seizure accorded police in drug cases (as described in Chapter 2; also see Solomon, 1980). The importance attached to law enforcement activity as a criterion for advancement in police careers may give rise to incentive to make drug arrests (Manning, 1977; Glaser, 1978). The rise in cannabis use has spawned a fertile area of arrest potential. Quotas for drug arrests are not unknown (Ford and Wachtel, 1976; Manning and Redlinger, 1978).

One check on such activity may be the community's opposition to extensive sanctioning of young and particularly middle class

drug users (Le Dain, 1972; Cook, 1969; Glaser, 1971). However, it has been observed that the police prefer to focus publicity on their large scale drug arrests, which the community generally supports, and avoid drawing attention to the routine incidents (Manning, 1977; 1980). The combination of the principle of admissibility of illegally obtained evidence, special police powers of search, availability of potential arrestees, rewards to police for making arrests, and public ignorance of the true extent of minor drug arrests may have produced an enforcement pattern of deliberate cannabis-seeking activity which contributes to a significant proportion of all possession arrests in Canada. Additional research based on other sources of data, such as police accounts and observation studies, is needed to further test the accuracy of this interpretation. The offenders' accounts do suggest, however, that the predominantly "coincidental" explanation of cannabis arrests should not be accepted without closer scrutiny.

POLICE BEHAVIOR: The Conduct of the Arrest

At the scene of the crime, what happened after the cannabis was detected? The police could have decided to issue a summons, set a date for court appearance, and release the accused; this was done in 29% of the cases. The balance of those charged were taken to the police station where they were held for an average of 2½ hours. The basis for this detention decision was not investigated, but the summons appeared to be a fairly new option, utilized by police to save time when the amount of cannabis was small and no charge other than possession was contemplated.

Until July 1974, the procedure in Toronto when a possession charge was laid was either to take the accused from the police station directly to police headquarters for fingerprints and photographs or to issue a notice to attend later. According to police sources, an administrative decision was made in mid-1974 to eliminate this procedure for simple possession of cannabis charges. (This was possible because of the hybrid nature of the offense, allowing summary or indictable proceedings.) As this policy change occurred during our data collection period, not all respondents experienced the same form of processing. In total, 13% were taken to police headquarters at once, as part of the arrest incident, and 49% were fingerprinted and photographed some days later. The 38% who did not undergo this procedure included some who reported to headquarters as ordered but on arrival were told it was no longer necessary.

For most who were fingerprinted and photographed, the procedure was described as fairly routine. Some reported the police who dealt with them at headquarters to be "nice and friendly," others that the police made insulting remarks to them: "Are those your teeth?"; and to an admitted homosexual: "Don't get excited just 'cause

I'm holding your hand." A few subjects seemed affected very strongly by this aspect of the processing, such as this woman: "I feel dirty about this, like a prostitute." This diversity of responses may have been related in part to the particular police on duty and their attitude towards offenders, and also to the varying degrees of equanimity of subjects in the face of officialdom.

The conduct of the arrest, in terms of interactions between police and offender, varied greatly. Two types of police actions seemed to be described in especially negative terms by those arrested. The first category involved threats or use of violence by police, either in an attempt to extract leads to dealers (discussed later) or for the apparent purpose of establishing their authority in the situation. Some examples are:

After they found the hash, one of them hit me in the mouth for lying [i.e. saying that he didn't have any]. I was shaking, I thought I was going to be a punching bag for them.

...

Four of us were sitting in the car in the parking lot. Two cops came up and yanked the door open and told us to get out. I said 'what the fuck for... what are you after?' They pulled me out and flung me hard in the back of the squad car. [a female subject]

...

I was lipping off to the cop [at the station]. He took me into a room by myself and pulled down the blind. He said, 'I could hit you.' I said, 'Why don't you?' He said, 'Because you're stupid, smoking this shit.'

In the second category of police actions which generated adverse reactions from offenders, the police conveyed that they "were really out to make a bust," or "out to get promoted," regardless of the amount of cannabis. Some illustrations of this perception of the police are:

I didn't think the police were so bad before, but you've got to be a real prick to bust for one joint.

...

They had no right to come to my car and question me and search me. It's private property. I've had the attitude since then that they're out to get someone.

...

I'm resentful that I was busted for only six joints. I've heard of police taking it away and not charging.

...

After the cop busted us, he let us go to the concert. He seemed elated. He said, 'You wouldn't believe the number of people I've arrested tonight.'

In contrast, the role of police as agents of the law, when they were viewed as only doing their job and not unfairly singling people out, seemed to be more acceptable to those arrested. In these cases, police appeared to operate in a more disinterested, jocular, or even sympathetic manner:

The cop said it was a chickenshit offense, but the law was there and he had to take me in.

...

Afterwards [i.e. the search and charging] they drove us back downtown and dropped us off, joking that, 'Anyone who sees you in the back of our car will think you're narcs.' I asked why they busted us and one said, 'Politicians pay us to bust you.'

...

They found the ounce right away . . . and then we sat around drinking beer. They seemed a bit apologetic for having to bust us.

The different stances adopted by police when confronting cannabis users, though doubtless affected to some extent by the individual characteristics and manner of the arrestee, suggest that police officers have differing concerns and perhaps skills in defusing a potentially hostile reaction by those arrested.

Another notable feature of the manner in which the police conducted the arrest was the attempt to obtain information from users about sources of cannabis or other illicit drugs. This was reported to be an element of the arrest by one-fifth of those interviewed. Eleven persons said the police offered to drop or reduce charges, and eight others that the police threatened or performed violence for the purpose of obtaining leads to suppliers. Some examples of police efforts to negotiate the charge are:

They asked me who I bought it from and offered to drive me home and only tell my parents, but no charges, if I'd tell.

...

The police said if I brought in someone bigger, they'd let me go.

...

They kept me in the cells for about 6½ hours and questioned me a lot. They said if I named a supplier they'd charge me only with possession [not trafficking].

Some illustrations of actual or threatened use of force are:

At the station, one cop said, 'Tell me where you got it or I'll ram my fist down your throat.'

...

When I wouldn't go along with this [telling him about supply] the big one grabbed me by the neck and called me a dirty bastard. I thought they were going to beat me up.

...

Four cops came to our apartment. . . . One took me and my friend into a bedroom and closed the door. He shoved us around, pushed us up against the wall, had us strip, and searched us . . . and then when we were standing facing the wall he placed his hand under my crotch and said, 'You want to lose your jewels?'

In only this last instance and one other did the respondent acknowledge that the name of a "pusher" had been provided to the police in response to these tactics. (In the one case involving several vials of hash oil, and in the other 14 grams of hash, the charges laid were simple possession only.) It has been reported in studies based on the police version of arrests that the accused, not the police, take the initiative in the transaction with police (Morton et al., 1968:1526, footnote 61). This was not supported by the offenders' accounts.

However, since these cases represent those brought to court, and successful negotiations may mean the case proceeds no further than initial police contact, the true nature of these interactions may lie somewhere in between the offender and the police version.

The routine application of such tactics as paid informants, bargaining, planting evidence, threats, violence, entrapment, and illegal search in drug law enforcement have been documented in a number of studies in other jurisdictions (Skolnick, 1966; Blum, 1973; de Fleur, 1975; Manning and Redlinger, 1978). Given the extra-

ordinary powers of search granted to Canadian police by the *Narcotic Control Act*, and the supportive role of the courts towards aggressive drug-seeking practices (Solomon, 1980), it should not be surprising that such incidents occur in a significant minority of cannabis arrests. It should also be noted that the examples of attempted bargaining, threats, and violence by police from the offenders' accounts were associated almost exclusively with plainclothes officers. It seems likely that these were drug squad members, who have a greater stake in generating further drug enforcement activity, than have uniformed police constables.

These descriptions of police behavior during the arrest situation underline the diversity of experience en route to becoming a "criminal." At one extreme, offenders were treated in a civil manner with the minimum of interference: detected, summonsed, no fingerprinting, no violence or threats. The more common form of processing involved some inconvenience, some anxiety: being held at the station for a relatively short time, an appearance later at headquarters for fingerprinting, tension in confronting the police. At the other extreme were those instances of force, of prolonged detention, of derogatory treatment, in which the state's right to assume control of the individual on the evidence of cannabis possession was brought home very sharply. Such is the heritage of narcotics laws that the police were exercising their legitimate discretion to enforce the prohibition against cannabis. Even acting within legally allowable limits, the options available to police for performing this role would seem to assure differential processing of offenders long before they reach court.

COURT APPEARANCE: Outcome of the Process

Many observers, confronted with "the hurly-burly, vulgar banality of what seems to be happening in the lower courts," (Wiles, 1979:591) alter their formerly abstract notions of how justice is dispensed (also see Feeley, 1980). The impression, formed by this author, of the Toronto court was not at variance with that described in other observational studies. Since our purpose at court was primarily to contact eligible subjects (not to systematically record the courtroom interactions), the reader is directed to these other detailed accounts of the lower courts in operation. The presentation here will deal with three matters of concern to offenders — who among co-accused would plead guilty, when would their case be heard, and the disposition.

Persons appeared at court charged singly or with co-accused. When more than one person was involved in the arrest situation, and the drug was not detected on anyone's actual person, the question of who would take the blame arose. The issue of "owner-

ship" often had been resolved at the time of detection by one party admitting possession. In some instances, this course apparently had either not been allowed by arresting officers or the co-accused had not settled at the time who would assume possession. This decision usually seemed to be reached by the time the case went to court. Examples of common reasons given by those who took responsibility for the offense were: "It was my grass," or "He is already in enough trouble." Others made their final choice at court, as when a group of four co-accused stepped outside the courtroom and flipped coins to determine the "loser." Charges against the co-accused were usually withdrawn when one defendant pleaded guilty.

When a case was called, it was necessary to clarify whether it would proceed that day or be delayed (remanded). Those who wished to plead guilty, even on a first appearance on the charge, were usually allowed to do so. This was possible when defendants waived their right to require the prosecution to provide a certificate of analysis, obtained from federal analysts, to prove that the substance involved was actually cannabis. One judge appeared reluctant to permit an accused to admit guilt without such evidence: "Are you asking me to sign my name to a conviction when a man may be innocent — this would be a terrible thing." This led to questioning about how the accused "knew" the substance was cannabis, as in this exchange:

Judge: How can you be sure it was marijuana?

Accused: I had a slight euphoric feeling.

Judge: That could be power of suggestion.

Accused: It looked like marijuana.

Judge: There are many substances that look like marijuana.

For the most part, however, guilty pleas were usually accepted, without further comment, on the basis of an affirmative response to the crown prosecutor's query as to the best knowledge of the accused that the drug was, in fact, cannabis.

Once the accused had been arraigned on the charge and the judge had found him or her "guilty," some discussion ensued before disposition. The police report of the incident — which usually included the form and weight of the cannabis and the place of occurrence — had been entered by the crown prosecutor. There was rarely any elaboration of these "facts," though occasionally the judge commented on the circumstances, for example, "Pretty open about it weren't you?" and, "By having it in a car, you affect more people than yourself." A defense lawyer, if one was acting for the accused, or sometimes the duty counsel, then made some submission about the personal characteristics of the offender, such as age, school attendance, and employment. If no lawyer spoke on the offender's behalf, some judges routinely

elicited background information through direct questioning. For instance, one judge sought details of an offender's age and employment and marital status, and then asked, "What is your experience with marijuana?" When the offender hesitated, the judge prompted, "C'mon, that's what we're here for." Any investigation of the background of the accused was usually, though not always, brief as illustrated by this exchange regarding employment:

Judge: Are you working?

Accused: No, I'm looking.

Judge: For how long?

Accused: About a month.

Judge: What were you doing before?

Accused: Working at _____

Judge: How long were you there?

Accused: One week.

Judge: A whole week? Where before that?

Accused: _____

Judge: For how long?

Accused: A month.

Judge: Before that?

Accused: _____

Judge: How long?

Accused: Not long.

Judge: That is a pretty spotty work record, isn't it?

Within a very few minutes, sentence was pronounced. For 42.1% of offenders sampled, the outcome was an absolute discharge, and for 33.7% it was a conditional discharge imposing some period of probation. The rest, (24.2%, were convicted and fined. None was imprisoned. The process of official response was over, and the newly labeled "criminals" were free to leave. It was at this point that we approached potentially eligible subjects for an interview. Their responses formed the basis for the presentation of findings in this and subsequent chapters.

Notes

CHAPTER 4: Becoming a Cannabis Criminal

- 1 The 41% of occurrences in public places could be further divided into those which would normally be covered by routine police patrols, such as streets, parks, or fairgrounds (24%), and those in which police presence was likely the result of a summons or a surveillance effort, such as bars, concert halls, restaurants, and

adjacent parking lots (17%). Instances of persons apprehended while sitting in a parked car were placed in the latter category, while the moving vehicle category was restricted to those incidents occurring in vehicles being driven on public thoroughfares.

- 2 When a car or home was searched *in absentia*, the police sometimes were waiting for the person to return, or even left a handwritten note saying, "telephone the RCMP detachment at _____."
- 3 According to this subject's account, he had had the misfortune to sit down at a lunch counter next to a stranger who was the subject of surveillance by the drug squad. When he was searched at the station, he said, the officer dropped a cube of hash among his clothes, then pressed for details of the other person's supplier in exchange for not pressing the possession charge against him.
- 4 In 1977, Prime Minister Trudeau made the following remark in a session with students, "Certainly the spirit of government policy — and it hasn't been passed in law yet — is that if you have a joint and you're smoking it to your private pleasure — you shouldn't be hassled." (Quoted in Bryan, 1979:181).

5

Impact at the Time of Sentence: Period of Official Criminalization

The first effects of criminalization to be considered are those associated with the interval from arrest to sentence — the period designated “official criminalization.” The process begins with the law enforcement agency in laying a charge, and can extend through one or more appearances in court until a finding of guilt leads to sentencing. The impact of criminalization would be experienced to some degree by those whose passage through the criminal justice system stops short of the designation of a criminal label. The sample reflects the persons who have reached the culmination of the societal reaction process and are officially recorded as “criminals.” The ensuing post-trial consequences in the period of “social criminalization” will be presented in the next chapter.

The 95 cannabis offenders were interviewed after being sentenced. About three-quarters had received final disposition within three months of being charged and all but four within six months. Thus the experience of the arrest and subsequent events was a recent occurrence and well within acceptable limits of retrospective studies.

In an effort to explore the impact of this social policy, both the costs to the offenders in the personal, social, economic, and legal spheres and the benefits with regard to specific deterrent effects will be considered. Our primary concern with respect to costs is with those socially transmitted effects of criminalization, rather than the automatic disqualifications or handicaps bestowed by law upon the recipient of a criminal record.² The operation of legal stigma, even at the early phase of the societal reaction process, forms part of the potential adverse consequences of criminal sanction (Schwartz and Skolnick, 1962).

COSTS

Personal Identity

The labeling perspective places a central emphasis on the alteration of an individual's identity by the act of conferring an official deviant status. Being caught and publicly identified for the first time

is seen as a crucial step that can create or intensify a deviant self-image and encourage commitment to a deviant role (Becker, 1963:31). Others are then perhaps more likely to view the person so labeled as possessing the negative characteristics associated with this status, which further reinforces the "spoiled" identity. Thus, being apprehended and found guilty of a criminal offense would be expected to produce labeling by self and others as a "criminal."

*Labelling
not
emp.
supported*

Empirical testing of these tenets, principally with juvenile rather than adult offenders, has shown limited support for perceived labeling by others (Foster et al., 1972;³ Jensen, 1972) while findings for self-labeling are mixed. Official processing was found to be related to thinking of oneself as a delinquent by Jensen (1972) and Ageton and Elliot (1974), but studies by Siegal (1975) and Hepburn (1977) showed that involvement in delinquent behavior, whether officially sanctioned or not, strongly affected self-perception. Reviews of labeling have concluded that the impact was a variable product of criminal justice system processing and needed to be related to characteristics of subjects, situations, and sanctions (Hagan, 1977; Thorsell and Klemke, 1972).

To ascertain whether the sample of cannabis offenders perceived their identities as stigmatized, they were asked, "Do you think of yourself as a criminal?" Frequency was indicated by choosing from often, sometimes, or never. The question was also posed with respect to the sample's perception of the likely responses of a variety of significant others. The sample's response indicated not only that they rejected the criminal label for themselves, but also that they perceived a majority of significant others as rejecting it as well (Table 9).

Considering first the question of self-labeling, six of the 95 subjects acknowledged sometimes or always thinking of themselves as criminals, and the rest responded firmly in the negative. Without greater variation in sample response, it is not possible to compare the features of the self-labeled "criminals" with those who reject the label. However, some points of interest may be noted. Since only one of the six had been convicted and fined, and the rest were discharged, sentence severity did not contribute to the criminal self-image. Further probing elicited the information that two of the six felt like criminals because of quite large-scale dealing activities, not because of the possession offense. One of these had an outstanding charge for possession for the purpose of trafficking, and the other considered himself lucky to have escaped a trafficking charge on this occasion. The other four subjects, who appeared to label themselves as criminals specifically in relation to the possession charge event,⁵ were encouraged to expand on their experience. The two heavier users emphasized one part of the process; the two infrequent users stressed the whole process. Two young men (aged 18 and 19), both heavy users of cannabis, singled out treatment by the police: one had been held

TABLE 9

*Sense of Criminal Identity as Perceived by
Self and Significant Others*

Self and Others	Proportion Responding Affirmatively**	
	%	(N)* forming % base
Self	6.4	(95)
Friends	5.3	(95)
Mother	30.7	(88)
Father	29.8	(84)
Boss/Teacher	28.0	(82)
Lawyer	11.8	(51)
Judge	34.6	(81)
Police	56.0	(84)

*Percentage base not always 95 due to exclusion of "don't know" or "not applicable" responses.

**Those answering "often/might/sometimes" or "always/definitely" to those questions:

Do you think of yourself as a criminal?

Would _____ think of you as a criminal?

(assuming knowledge of your cannabis charge).

for several hours in the cells and the other reported being struck "for lying" in the course of the arrest. For a third person in this group (a pregnant woman in her twenties), an occasional user of marijuana, the actions of the police seemed to be rendered particularly important by the presence of her mother and daughter at the arrest. "They [police] didn't show me any respect, they acted like I was a prostitute in front of them" (see Hepburn, 1975). This subject also said she felt "dirty" and "cried for a week" about being fingerprinted, and described going to court as an "embarrassing" experience that made her feel "nervous, sick." The fourth person, who had been caught the first time he tried marijuana, said, "I feel guilty about it . . . [this feeling] became stronger at court." (see Appendix C). These latter two cases, who suggest almost classical fulfillment of the degradation ceremony of criminalization, may have been particularly vulnerable as inexperienced users who lacked the support in their family and social networks for "normalizing" their deviance.

Why did the vast majority of offenders not accept the label of criminal? Some explanation for the resistance to the criminal self-label was found in their responses to other questions during the interview. The sample group was asked, in an open-ended question, to describe the sort of activity and person they would associate with

Not accept label because victims don't see it as a crime

"criminal." Most portrayed crimes in the conventional way, as predatory acts committed against victims, often citing such offenses as murder, rape, and robbery (much as do the general public; see Boydell and Grindstaff, 1974). Interestingly, many subjects also went on to elaborate their belief in the widespread use of cannabis: "Lots of people, all ages, with kids, use grass," and, "More people are smoking than people think; I know bank managers and stock brokers who do." These comments suggest the "pluralistic ignorance" about the extent of cannabis use in the larger society also noted by Brown et al. (1974:536). It was suggested in their study of marijuana users that this type of non-conforming behavior fosters the "pluralistic ignorance" that more people endorse their views and behavior than is really so,⁶ thus fostering normative conflict and change in this area.

Another question posed during the interview provided further evidence of the sample's perception of cannabis offenses as relatively low in intrinsic criminality. Respondents were asked to assess the criminality of a variety of offenses in relation to cannabis possession (Table 10). Out of nine other offenses, six (trafficking in cannabis, possession of heroin, criminal negligence, break and enter, assault, and trafficking in heroin) were judged to be "more criminal" than possession of cannabis by a majority of respondents. Two offenses (illegal abortion and public drunkenness) and the parking infraction were considered either the "same" or "less" criminal by at least two-thirds of the cannabis offenders. The sample members were also more inclined to perceive trafficking in cannabis and heroin possession as the "same" as cannabis possession (35% and 30% respectively) than they were break and enter, assault, and heroin trafficking (less than 5%).

In answering the question of whether they thought that significant others in their social circle would attach the stigma of "criminal" if aware of the cannabis charge, considerable variation was found (Table 9). The strongest support for their own rejection of the label was perceived among friends. Only 5% of the subjects indicated that friends might view them as criminals. It is of interest to note that 71% of the group reported having friends criminalized for cannabis offenses, suggesting a network of peer support available for "fighting back" (Rogers and Buffalo, 1974). The older adult world was seen as more likely to respond with a criminal identification, with about 30% of mothers and fathers and 28% of bosses (or teachers in the case of a student) being placed in this category.

The same question was also posed in relation to the criminal justice personnel they had come in contact with in the course of their case (not with respect to "lawyers," "judges," or "police" in general). The police were perceived as most likely to view the respondent as a criminal (56%), followed by judge (35%), and lawyer (12%) (Table 9). Even those who are part of the process of punishing cannabis offenders were seen as divided in their propensity to apply criminal labels.

TABLE 10

Perceived Criminality of Various Offenses Relative to Cannabis Possession

Criminality Relative to Cannabis Possession*	Offense			
	Less	Same	More	Don't Know
Parking By-Law	42.1	27.4	24.2	6.3
Having an Illegal Abortion	29.5	37.9	20.0	12.6
Public Drunkenness	21.1	46.3	26.3	6.3
Trafficking Cannabis	1.1	34.7	58.9	5.3
Criminal Negligence	10.5	6.3	76.8	6.3
Possession Heroin	3.2	29.5	61.1	6.3
Break and Enter	1.1	4.2	88.4	6.3
Assault	1.1	1.1	93.7	4.2
Trafficking Heroin	—	2.1	93.7	4.2

*"Is someone convicted of (offense) more criminal, less criminal, or the same as someone convicted of possession of cannabis?"

(N=95)

*
ctrl + 5
In review then, the vast majority of the sample (94%) did not apply a "criminal" identification to themselves after their court appearance for cannabis possession. The neutralization of the label appeared to be achieved principally through two strategies — the first was to deny the criminality of the offense in all but law and the second was to cite the widespread use of the drug, especially by "respectable" people.⁷ The marked lack of self-labeling, at least in the direct response of feeling "like a criminal," found in this study seems to be largely due to the nature of the "crime." As Hepburn concluded cogently, "The label must be consistent with the actor's perception of his behavior before it will be accorded legitimacy" (1977:257). Not all degradation ceremonies are successful.⁸

Also to be considered as a likely contributing factor to the offenders' non-acceptance of the criminal label was their perception of a high degree of peer support and, to a lesser extent, family and community compliance in defining cannabis users as non-criminal. While some anticipation of stigma from others was recorded (similar to findings by Foster et al., 1972), except for police it was perceived by less than one-half of respondents. On the whole, negative labeling by self and others did not result from official criminalization.

Social Relationships

The disruption of social relationships that may occur in the

initial phase of criminalization is largely a product of others' actual knowledge of and reaction to the offense. As described earlier, this study was conducted in a Metropolitan area, where a large central courthouse and the usual non-reporting of possession charges in local newspapers made concealment of the offense a realistic possibility. Although, in most instances, the decision to reveal the court involvement over cannabis was the sample member's own, other uncontrollable factors intervened on occasion.

The two groups of significant others about whose knowledge the sample expressed the least concern were peers and partners. When asked who knew about the offense, respondents indicated that the impending court appearances had been shared with friends and partners (when applicable) of most of them. Of those who lived with a spouse or common law partner (17%) at the time of trial, only one was seriously concerned about his mate's reaction and intended to keep the news from her. About 90% had shared the event with several friends. Of those who had told at the most one close friend about the charge (9%), two underlying patterns were associated with this reticence. The older offenders, who had both user and non-user friends but none who had been charged for a similar offense, made such remarks as:

I might lose a bit in some friends' eyes, those who couldn't understand my views.

...

They wouldn't like it.

...

They might ostracize me at my club.

In a younger and regular-using sub-group of those who had not told their friends, the feeling was more that the incident was trivial and it might appear stupid or "uncool" to be caught for such a thing. One remarked, "People don't broadcast being to court any more. Two years ago, when it meant you were in trouble you did; not now when you get off."

It will be recalled that nearly half the sample still lived at home with at least one parent. Distress to parents who learn of the arrest has been suggested as a serious social cost (Le Dain, 1972:293). The subjects were concerned with two levels of parental knowledge — one of cannabis use per se and the other of criminalization for the offense. It was reported that more parents knew about the sample members' use of cannabis than knew about the court proceedings. Of subjects who had some contact with a parent, 73% of their mothers and 65% of their fathers knew they had tried cannabis before the charge was laid. In contrast, these respondents reported 42% of mothers and 36% of fathers were aware of the court proceedings.

At one extreme, a few subjects reported a high level of parental sympathy and support for the court appearance, when use was already known and accepted. For example, one father who was present in court with his 20-year-old son remarked, "Isn't that ridiculous? Why should he get a fine for something I did 20 years ago — they were called reefers then and cost 25 cents each." At the other extreme were nearly 7% of the cases where the revelation of use and charge occurred simultaneously and was upsetting for all parties, as this illustrates:

The worst part was with my parents. I was going to tell them but they found out right away. Legal Aid sent me a letter that didn't have my name quite right so they opened it. Now they feel I was busted for drugs, that I'm addicted to marijuana. . . . They weren't positive I smoked before this, or didn't want to know.

Those whose parents had not found out about either the use or the court appearance wished to keep it that way. Some described their parents' likely reaction as extreme, as did this respondent, "They'd jump to conclusions about all dope, feel that my life is ruined, and likely throw me out of the house." For such subjects, avoiding the "drug user" label seemed as important as the "criminal" identification. For others who hoped to conceal the offense, the wish to avoid upsetting or hurting their parents, and the belief they could handle the matter themselves, seemed more influential than the expectation of punitive repercussions in the home situation. At the time of the court appearance, sample members who did not live with their parents, or if they did but were not arrested at home, appeared fairly successful in maintaining secrecy about the offense.

Even fewer employers were known to have learned of the court case (27%) than mothers or fathers. As with parents, offenders generally told their employers only when they were quite sure of a sympathetic response or when it was unavoidable. Another problem was the necessity of taking time off work or school to attend court. Work posed the greater problem for the sample since most students were out of school at the time of the interview, though often engaged in summer employment. Respondents were asked how they had accounted for their absence from work that day. Excluding those who had no need to provide an excuse because they were not employed, had the day off, or were working other shifts, the balance of respondents (N=58) were quite versatile in their handling of the situation. About half mentioned court and half did not. Twenty-one percent told the truth to employers about appearing specifically on the cannabis charge. For example, a bank teller showed her summons to the assistant manager in order to get the time off. She said, "He started to tell me to write things down — he didn't trust my memory." Some other reason than cannabis for the need to attend court was given by

14%, usually some kind of traffic offense. The 17% who said that they had to be at court, and left it to the employer to infer the reason, were open to other imputations: "When I told my boss I had to go to court, he asked, 'Why?' and I said, 'I'd rather not say.' He said, 'Rape?'" Those who said they were able to take the day off without providing any explanation (26%) were usually either self-employed or involved in the sort of casual labor that is simply not paid for on days absent. A last group, consisting of 23% of those who would have been at work if not at court, claimed to be sick or to have an appointment. Most of the sample preferred not to tell employers the real reason for their absence, and resorted to a variety of strategies whose impact was uncertain.

Economic Deprivation

The more long-term economic costs to the offender will be addressed in the next chapter with the follow-up data. However, some deprivations related to criminalization were evident even in the brief period from arrest to court disposition. These took the form of financial and job losses.

Respondents were asked to estimate their financial losses in relation to the cannabis possession offense. Expenses they listed included lawyer's fee, amount of fine, lost pay (\$20 per day average), and value of cannabis seized by police. (The latter "expense" represented an expenditure of income to the subjects as well as the cost of replacement for most; however, value was only counted once.) About one-quarter of the sample considered they had no financial loss. Of those who had, half put the figure at \$70 or less, and one-fifth at \$200 or more. While one-third had retained their own lawyer, the fee was not included if paid by legal aid. The cost of the fine, ranging from \$25 to \$300, was considered a major expense by those receiving this sentence. Slightly over half the sample had come to court more than once on the charge; of those for whom missed work meant no pay, the losses could and did mount up. Although the amounts of cannabis seized were usually small, they might have been the only expense for those who were not fined and had no lawyer to pay. When asked to assess the seriousness of the financial loss to themselves, a majority (80%), considered it no more than an inconvenience, while for the balance it required a change of plans or was viewed as a serious loss.

Other economic casualties were also reported in the pre-trial period. Five persons lost jobs in a manner traceable directly or indirectly to the offense. In three cases, absenteeism or lateness caused by the arrest or court appearances apparently led to firing. These cases, recorded in the field notes, are as follows:

A 22-year-old man reported that by the time he was released from the station, after the arrest, he was late for his job as a shoe salesman. When he arrived

he was told he was fired. "I could have made some excuse but I decided I didn't want to work for someone as shitty as to fire me for being late without asking why."

...

A 16-year-old man, appearing for the second time on his charge, reported that he lost a job when his boss found out about the first court appearance. He said he had sat in court all that day and not been called. Then the police had served a "fail to appear" notice on him the night before the second appearance and held him in custody for it. He had a new job as a "machine feeder" that was to start at 8 a.m. that day, and he thought he would have lost it by not showing up.

...

A woman in her late twenties had appeared several times on the charge, while awaiting a certificate of analysis. She lost a position she had held for a number of years with an insurance company for absenteeism for these appearances. She had not told her employers the reason but believes they found out.

In two other cases, the job loss was due to some overlap of the offense with the place of work. The following accounts were provided:

Police checked the subject's parked car for stolen goods at the company lot where the 17-year-old man worked. Their suspect was someone the subject had given a ride to that day. The police found cannabis in his car. He received notice.

...

After being arrested at his parents' home for one plant, an 18-year-old man moved in with his girlfriend. Soon after, cannabis was found at this apartment while he was at work. This was a factory job he had begun one week earlier. He was phoned there and told to return home immediately or he would be arrested at work. "I told the boss the police wanted me at home. He said, "What about?" I said, "A ticket." He said, "Well, don't bother coming back."

These examples are quoted at length to illustrate the difficulties that may arise prior to any finding of guilt and official labeling. An accused who is not very adept at dealing with the situation, and is readily dispensable at the place of work, seems particularly vulnerable.

Disrespect for the Law

It has often been assumed that those who are liable to be prosecuted for their personal use of cannabis will develop a more generalized disrespect for the law.⁹ The loss of respect is thought to flow from the inappropriateness of the prohibition, and the discriminatory application of sanctions, to encompass all law. Disrespect or respect for the law may be seen as operating at three levels of generality: in relation to society and its codified laws, the functioning of the criminal justice system, and the offense-specific prohibition (Andenaes, 1975:372). The question of disrespect centres on whether the legal code and its enforcement apparatus is perceived by the offender as legitimate and binding. Data will be presented with regard to each aspect of disrespect. Moving from the more specific to the general, the discussion begins with the offense-specific prohibition.

Disrespect — Marijuana prohibition

It will be recalled that all but one sample member acknowledged use of cannabis at some time in the past. Not surprisingly, when asked their opinion of the statement, "Marijuana use should be against the law," 66% strongly disagreed and 29% disagreed with it. Since almost all the respondents disputed the legitimacy of the cannabis-specific prohibition, the question arises as to what extent disrespect was manifested at other levels by the time of their court appearance and sentencing.

Disrespect — Criminal justice system

Sample members were exposed to the operation of the criminal justice system at the two key points of arrest and trial. Accordingly, they might have been expected to make some assessment of the legitimacy of the police and the courts based on this experience.

One outcome of the enforcement of cannabis laws that has been postulated is the development of unfavorable or hostile attitudes to police by those they arrest (Le Dain, 1972:292). The subjects were asked at the time of trial to describe how they felt about the police before and after they were charged.¹⁰ Sixty-five respondents (68%) said their attitude had not changed and 30 (32%) said it had. Of course, some already had negative attitudes which remained unaltered. Only one of the 30 whose attitude changed reported a more favorable attitude since the arrest. The other 29 indicated a change for the worse.

These negative attitude shifts seemed to be related to two types of police actions displayed in the arrest situation, as described

Offense-specific
disrespect

Disrespect
for
the
police

earlier in Chapter 4. The first type involved police use of violence or threats of violence during the arrest. The second type of activities related to a negative shift were those in which some of the subjects perceived the police as being very determined to get an arrest to their credit, regardless of the amount of cannabis they found.

In contrast, people in general did not become more negative to the police when they appeared to operate in a more disinterested, non-threatening manner. These findings suggest that unfavorable attitudes to the police do not follow automatically from a cannabis offense, but depend, to some degree, on the manner in which the arrest is conducted.¹¹ Some disrespect for the police had been the outcome of cannabis arrests in a third of the cases.

The second area of possible disrespect for the criminal justice system is directed at the courts. Since judgments of the fairness of the court system depend in part on the evenness of sentencing practices, it was important to discover how the offenders perceived the consistency of sentences. They were asked if they thought they got the same or a different outcome than was "usual in your type of case," and if different, was their sentence more or less severe. Seven subjects did not express an opinion. Of those who did, 51% who got an absolute discharge and 59% who received the other two alternatives believed it to be the "same" as another person would get. Of those who thought it was different, all of those who received an absolute discharge considered the penalty "less severe." Respondents who were given fines or probation were almost equally likely to have regarded their sentence as "more severe" than usual (27% and 31% respectively).

That their sentences should be perceived as consistent by a majority of respondents in all three sentence outcome groups is an interesting comment on the fairness attributed to the court system. This is so particularly in view of the discussion in Chapter 3 which indicated actual wide disparities in sentence, apparently related primarily to which judge heard the case rather than to other legal characteristics. However, about half the subjects went to court only once and were thus exposed to only one judge whose approach was generally quite uniform (see Chapter 3, Table 8). Those who appeared more than once were more likely to have perceived inconsistencies (see Table 11).

Subjects who observed the variation in sentences sometimes reacted quite strongly, as this quote from a 19-year-old man, who heard the judge "convicting and fining everyone" on his first appearance, and who had received a discharge from another judge on his second appearance, illustrates:

It's the judge or his mood that makes the difference; one day he's ruining your life, the next day he's letting you off. It's ridiculous.

TABLE 11
*Perceived Consistency by Sentence,
 Controlling for Trips to Court*

Perceived Consistency*	Sentence					
	Absolute Discharge		Conditional Discharge		Fine	
	One Trip	More than One	One Trip	More than One	One Trip	More than One
Different						
Less Severe	40	60	6	15	—	19
More Severe	—	—	19	47	33	25
Same	60	40	75	38	67	56
Total (N)	(22)	(15)	(16)	(13)	(6)	(16)

*"Do you think you got the same or a different outcome than was usual in your type of case?"

(The awarding of an absolute discharge was not necessarily seen to be the most fair decision. A 33-year-old man (who was convicted and fined) remarked:

You shouldn't get an absolute discharge because if there is a law and a penalty this doesn't mean anything. If you're going to give this discharge it means you shouldn't have a law at all. If I'd been given this, I'd laugh.

An 18-year-old woman, after receiving an absolute discharge, commented:

The judge is telling me that the courts and law are ridiculous. If I get dressed up to go to court I'll get this [discharge] and in a year I can get a pardon.

Another person had this perception of the judge.

He treats people like criminals and looks down on them and I don't respect him as a person.

The examples cited show that the granting of legitimacy

to the court system is more than a matter of unbiased sentencing. While a majority of all respondents (52%) perceived their sentences as consistent at the time, albeit inaccurately, their volunteered remarks showed feelings of disrespect which also stemmed from the judge's courtroom actions, observed differences in sentencing without apparent logic, and the inherent contradictions of the discharge provision. Considering that 16% of the total did believe that they had been sentenced more severely than was usual, some disrespect for the court of this nature, too, had been generated by their initial experience there.

Disrespect — Law in society

It will be recalled that this sample was law-abiding to the extent of reporting no prior convictions at the time of the court disposition of the cannabis offense. In this sense they may be said to have considered society's legal code to be binding on them (Jensen, 1972). On the other hand, they may have engaged in undetected criminal acts other than drug use¹² and a minority had prior legal records of delinquency (24%) and adult records of arrest (26%). However, what is of concern here is whether or not those who had been singled out and prosecuted for the specific offense of cannabis possession, also displayed a more generalized disrespect for the place of law in society. Data brought to bear on this question will include both attitudinal items and an exercise in assigning penalties for a variety of other offenses.

The respondents were asked whether they agreed or disagreed on a four-point scale with three statements:

It's important that people in society respect most of its laws.

People should break laws they disagree with.

Most laws are worth obeying.

The sample's response showed very high respect for the law in general. The large majority agreed with the first and third statements (95% and 93% respectively) and 86% disagreed with the second statement. Response to these statements was quite independent of their disagreement that, "Marijuana use should be against the law." Thus these findings suggest that strong expressions of respect for the law in general can co-exist with disrespect for a specific prohibition.

Another indicator of respect or normative conformity with the codified law is the extent to which conventional penalties are deemed appropriate for various offenses. Those disputing the legitimacy of the law might be expected to deny the right of society to punish those committing other types of crimes. Surveys of "non-criminals" asked to assign penalties for a range of crimes show a fairly

stable hierarchy of seriousness (Rose and Prell, 1955; Boydell and Grindstaff, 1971, 1974). Accordingly, the respondents were asked, "If you were the judge, what would you consider the most appropriate penalty, if any, for a first offender found guilty in each of these cases?" Each offense and an example was read out in turn. A card with this range of penalties: none, absolute discharge, probation, fine, jail, other, was given to the respondents who were then asked to choose from this list and elaborate on the choice of "other." The results, shown in Table 12, indicate a wide variety of sentences assigned. Cannabis possession, illegal abortion, and public drunkenness received the most lenient penalties, a fine was generally applied to the parking offenses and criminal negligence, and jail sentences were favored for break and enter, assault, and trafficking in heroin. The option of treatment was mentioned most often in relation to heroin. possession. While no strictly comparable data are available, findings from a survey conducted in Ontario in 1969 suggest that this offender sample would have imprisoned a slightly higher proportion of those convicted of assault, and a somewhat lower proportion of those committing break and enter or hard drug trafficking offenses than the "public" (Grindstaff and Boydell, 1974).

These findings suggest that despite criminalization, cannabis offenders display the ability to differentiate the relative seriousness of other offenses, and do not refute the legitimacy of the court system in punishing predatory criminals and distributors of "hard" drugs. Their chief quarrel with the law is over the prohibition against cannabis.

Loss of Rights and Privileges

Another set of costs is associated with possible loss of certain rights and privileges when the criminal status of the offender comes to the attention of an official bureaucracy. The rights and privileges which a government can withdraw automatically are fewer in Canada than in many western nations (Damaska, 1968). One possible repercussion that was a concern to three sample members was in relation to their landed immigrant status. Other respondents were planning to travel and wondered if they would be able to acquire passports. Such decisions seem to be largely ones of administrative discretion in Canada (Leon, 1979). Of course, other countries can refuse to grant visas or in some way restrict access to travel within their borders on the basis of a known record. These points are mentioned to show that some anxiety in this area existed at time of trial, though any repercussions would take time to appear and will be considered in the next chapter on the one-year follow-up period.

The Offender's Subjective Perspective

As a concluding note on the costs linked with the period of

TABLE 12
Penalties Assigned to Various Offenses

Offense	Penalty*					
	Nothing/ Discharge	Treatment/ Help	Probation	Fine	Jail	Other
Possession Cannabis	78.9	—	8.4	10.5	—	2.1
Parking By-Law	14.7	—	1.1	80.0	—	3.2
Having an Illegal Abortion	72.6	2.1	4.2	9.5	3.2	5.3
Public Drunkenness	57.9	4.2	3.2	23.2	4.2	7.4
Trafficking Cannabis	31.6	—	17.9	42.1	7.4	—
Criminal Negligence	6.3	—	3.2	69.5	11.6	2.1
Possession Heroin	15.8	26.3	14.7	27.4	14.7	2.1
Break and Enter	2.1	—	7.4	18.9	60.0	—
Assault	2.1	6.3	2.1	11.6	80.0	1.1
Trafficking Heroin	4.2	—	2.1	11.6	80.0	1.1

*"If you were the judge, what would you consider the most appropriate penalty, if any, for a first offender found guilty in each of these cases?"
 (N=95)

official criminalization, the offender's subjective assessments of the "worst part" of the whole experience will be presented. Their responses may be seen to indicate what they perceived as punitive about the process in a personal sense. This open-ended question was put to the sample at the end of the interview:

What was the worst thing for you about the whole experience of having to come to court on this charge?

Their responses were categorized in two ways. The first was according to the segment of the criminalization process the response referred to, i.e. arrest, court, etc. The second was according to the content as it reflected an instrumental or affective orientation. The offender's reaction was considered "instrumental" if the worst thing was a tangible deprivation or a possible liability, and "affective" if the respondent described the worst thing in the context of personal feelings about it.¹³ The grouped responses are shown in Table 13.

For one-third of the sample, the worst part occurred prior to the actual court appearance, and was much more frequently described in an affective rather than instrumental way. The arrest as the worst phase was usually described in terms of police treatment: "Getting roughed up scared the hell out of me"; or in terms of the inconvenience of the time spent at the station and the interference with other plans. While not all the sample members were taken to police headquarters for fingerprints and photographs, two who were designated this the most unpleasant part; for example, "The thought of them having my prins and photograph — it makes me feel guilty." For the greatest number of this group, the worst part was the waiting itself before the court appearance. The uncertainty of what the outcome would be and the fear that parents or employees would find out were the features emphasized here.

Those who selected aspects of the court as most negative (41%) usually were referring to either the compulsory attendance or the sentence itself. Their responses were more often couched in instrumental than affective terms. Going to court was described as a "hassle" because of missing work, losing pay, getting fired, coming back more than once, and waiting to be called. For others, the "tension of standing up in front of the judge" and "having to admit I was wrong by pleading guilty" were the objectionable parts of the court experience. When the sentence was perceived as the worst thing, it was usually a heavy fine or lengthy period of probation that was considered a hardship. Some who regarded their sentence as inappropriate reacted quite strongly:

I'm insulted, to get probation [12 months] for such a petty offense.

TABLE 13

Offenders' Perceptions of "Worst Thing" about Whole Experience of Official Criminalization, by Phase of Process and Nature of Reaction

Phase or Aspect	Instrumental		Affective	
	No.	%	No.	%
Before:				
Arrest	3		9	
Headquarters	1		1	
Waiting	2		15	
Sub Total	6	12.2	25	56.8
During:				
Court	18		8	
Sentence	10		2	
Sub Total	28	57.1	10	22.7
After:				
Record	11	22.4	3	6.8
General	4	8.2	6	13.6
Total*	49	99.9	44	99.9

*Two missing cases (N = 93)

...

I expected an honorable [sic] discharge . . . It's not fair, he didn't even ask me if I had anything to say . . . they don't let you explain [recipient of \$100 fine for four joints].

For a third group of offenders (15%), the worst part was viewed as yet to come, in the sense that having a criminal record and the police knowledge of it might create difficulties in the future. Those who had bonded positions or who were seeking work were very likely to consider a record the worst part, and were sometimes not clear just what the implication of their discharge was in this regard: "A record — that's what I was worried about. . . I still don't really know if I have one or not." That the police might respond differently to someone with a record was also raised: "They might be rougher knowing about the record." And finally, one group (11%) could not identify the worst thing

more specifically than the "whole process" or "everything in general" or the "waste of time it all took."

This section has reported what the offenders regarded personally as the most punitive part of the criminalization experience by the time they were sentenced. Although the costs of criminalization in a policy sense are often discussed in relation to the post-court period (i.e. effects of a criminal record) the majority of offenders perceived the phases of arrest and waiting for trial, and the strictures necessitated by the court appearance, to be the "worst" part. Only 15% singled out the aftermath when their record might count against them. Perhaps if the sentences awarded had been more severe (i.e. more subjects had been convicted and fined) this aspect would have been selected by more recipients. Also, the question may have been interpreted by some to mean "worst up to this point."

As has been pointed out during this discussion of personal, social, economic, and legal costs, some are incurred prior to sentence and are thus independent of the final court disposition. In this sense, "the process is the punishment" (Feeley, 1980). The period of official criminalization from arrest to sentence ranged from a minor inconvenience for some respondents to a major disruption in the working and social lives of others. Such results contribute to the total costs of criminalization.

BENEFITS

The benefits of applying criminal sanctions to cannabis use are assessed with regard to their general and specific preventative function.

Deterrence is the principal object of punishment. Punishment is meant to persuade others that it does not pay to engage in the prohibited behavior, and it is also meant to teach a similar lesson to the offender.

(Le Dain, 1973:116)

*Spec. det.
studied
not general* Criminologists refer to the prevention of criminal activities by others as *general* deterrence and to the dissuasion of offenders from further law-breaking as *specific* deterrence (Andenaes, 1974). Since this study is of cannabis users who experienced the maximum official response of criminal labeling, the data address directly the issue of specific deterrence. Statements about general deterrence would require a population of users and non-users. For policy purposes, however, the two types of deterrence are functionally interrelated. The application of the criminal process to particular users is the means by which the threat is transmitted and made credible to the community at large. Cannabis control policy to date has rested on the

* assumption that, whatever the costs to criminalized individuals, the discouragement of use in the population-at-large is sufficiently great to justify the prohibition. Therefore, studies of deterrence which are relevant to the prevention of cannabis use generally will be reviewed briefly before turning to the evidence regarding specific deterrent effects in the cannabis offender group.

General Deterrence

Classical deterrence doctrine states simply that the likelihood of law-breaking varies inversely with the certainty, severity, and swiftness of punishment. Since the success of general deterrence is measured by behavior that does not occur, such effects are "inherently unobservable" (Gibbs, 1975). But in the absence of 100% effectiveness — laws are broken — researchers have concentrated on evidence of crimes that are committed.

The earliest deterrence studies examined the fluctuations in officially recorded crime rates in relation to various indices of certainty and severity of punishment (e.g. rates of clearance by arrest, i.e. charges laid, for crimes reported to the police; maximum penalties available in law; proportion of offenders imprisoned). Research on the effects of the objective properties of punishment has been reviewed elsewhere and will not be discussed at length here (see Tittle and Logan, 1973; Gibbs, 1975; Andenaes, 1975). The weight of the evidence produced, while not conclusive, suggests that certainty of sanction is consistently a more important factor than severity, though murder remains an anomalous crime. Tittle and Rowe (1974) concluded that a certain threshold of arrest certainty must be reached (30% of reported crimes in their study) before an effect on crime rates can be demonstrated.

Research which has been restricted to deliberate predatory crimes against person or property (known as the "index" crimes in the U.S.) may not be generalizable to victimless crimes such as drug use. The emphasis of the effects of punishment on crimes does not deny a reciprocal relationship. As Andenaes has noted, crime may also have an impact on punishment; a sharp increase in crime rates (as has happened with cannabis offenses) may result in various adjustments to avoid overburdening the criminal justice machinery, thus creating "an impression that leniency in dealing with offenders is responsible for high crime rates" (1975: 348). A more valid assessment of general deterrence with respect to cannabis use is provided by taking surveys of self-reported cannabis use before and after legal changes have occurred.

Such a natural "experiment" has been made possible by the reduction of penalties for marijuana possession in several states in

the U. S. during the 1970s. In a comprehensive review of the literature which evaluated the effects of these efforts at "decriminalization" on rates of use, Single (1980) concluded that the impact had been minimal. Particularly strong evidence was cited from a study of changes in marijuana use in states which had reduced penalties, as compared with control groups of states with relatively severe and relatively moderate penalties. For both adults and juveniles, no substantial differences were apparent in the trend to increased marijuana use in all three types of states. Further support for the finding that reduced sentence severity did not lead to increased cannabis use was provided by Johnston (1980). His longitudinal survey of American high school seniors allowed a comparison of trends in decriminalization and non-decriminalization states between 1975 and 1979. He concluded that "any increase in marijuana use in the decriminalized states, taken as a group, was equal to or less than the increases being observed in the rest of the country where decriminalization was not taking place" (Johnston, 1980:5).

* The relative unimportance of the penalty structure in deterring the use of cannabis may be related to the very low actual risk of punishment. The Le Dain Commission estimated that less than 1% of those who had used the drug in a given year were convicted (1973:54). The proportion was about the same in 1978, based on approximately 30,000 convictions in a Canadian user base of 3,000,000 (Blackwell et al., 1979). The ratio for use incidents rather than offenders, a more valid indicator of objective certainty of punishment, would be even lower. Of course, these studies of the objective properties of punishment tell us nothing about how penalties and the risk of detection are perceived by the would-be offender. Andenaes (1974) and others have argued that these are decisive factors in creating the deterrent effect, and it is to this "marginal" group of potential offenders that the criminal law is directed (Webb, 1980).

An emergent theme in the next phase of deterrence research was to examine the effects of the subjective properties of legal punishments. Erickson, Gibbs, and Jensen argued that "perceptual variables must be taken as paramount in testing the deterrence doctrine" (1977: 305). Studies which included measures of perceived certainty and severity of punishment tended to support the greater influence of risk of detection as compared to penalty, though severity was found to have some relevance when certainty was rated high (e.g. Claster, 1967; Jensen, 1969; Waldo and Chiricos, 1972; Teevan, 1976; Erickson et al., 1977; Erickson and Gibbs, 1979). In the sample of college students surveyed by Waldo and Chiricos (1972), self-reported marijuana use was unrelated to perceptions of severity of punishment but was related to perceived certainty of punishment, i.e. use was more likely among those who perceived a low likelihood of arrest. A replication of this research among Canadian high school students (Teevan, 1976) produced similar results, and both studies

noted that neither users nor non-users considered the risk of detection for this offense to be high. However, another study (Silberman, 1976:453) did not find the expected negative relationship between arrest certainty for marijuana and levels of self-reported use. This discrepancy leads to the consideration of a third group of recent deterrence studies which involved reconceptualization and expansion of the classical deterrence doctrine.

The deterrence perspective has been criticized for excessive reliance on legal controls to the exclusion of other social pressures which may induce or inhibit conformity with the law (Silberman, 1976; Anderson et al., 1977; Meier and Johnson, 1977; Webb, 1980). If neglected empirically, the importance of informal controls on behavior received theoretical recognition by Andenaes in 1966: "The motivating influences of the penal law may become more or less neutralized by group norms working in the opposite direction" (cited in Anderson et al., 1977:104). Fear of punishment may not be the only reason for law-abiding behavior. These studies shared the assumption that deterrence is only one possible answer to the question, "Why don't they do it?" (Meier and Johnson, 1977). And, perceptions of legal threats were combined with measures of various extra-legal influences in attempts to formulate a broader social control perspective.

Silberman (1976) devised a complex, multivariate model of deterrence and tested it with data from a sample of university students. His study was, in part, an attempt to replicate and expand the work of Waldo and Chiricos (1972). Silberman related perceptions of certainty and severity of punishment, moral commitment (i.e. whether an offense was always wrong or not), and peer involvement (whether a friend had been arrested) to self-reported criminal activity (which included a number of offenses besides marijuana use). A general pattern of deterrence was described in which moral commitment acted as a crucial intervening variable between perceived arrest certainty and law-breaking activities. Unlike more conventional crimes, no negative relationship was found between perceived certainty of punishment and the involvement in offenses such as marijuana use and underage drinking which were considered virtually immune from legal regulation. The explanation put forward is that a very low actual probability of arrest, reflected in student perceptions, can diminish the legitimacy of the given legal norm which in turn reduce the deterrent effect of the arrest threat. The discrepancy between these results and those of Waldo and Chiricos (1972) are attributed to the erosion of the threat of arrest over time and the greater acceptability of marijuana use in Silberman's sample of students. Thus, for offenses such as marijuana use, "the absence of legitimacy of the legal prohibition . . . and the corresponding positive social support for engaging in them, make the threat of punishment an ineffective deterrent" (Silberman, 1976:455).

Anderson, Chiricos, and Waldo (1977) re-analyzed the data presented by Waldo and Chiricos (1972) in order to examine the combined deterrent effects of formal and informal sanctions on self-reported marijuana use among university students. Informal sanctions, measured by perceived attitudes of family and friends to marijuana use and by friends' involvement in this activity, were found to have a substantial, independent impact on marijuana use that was slightly greater than that of perceived certainty of punishment. However, the cumulative effect of informal and formal sanctions was stronger than that of either alone. These findings (based on data collected in 1970) must also be considered in light of Silberman's contention that the passage of time has reduced the fear of detection to the point of irrelevance. Of course, both studies were of university students who are not a group at high risk of arrest among marijuana users generally (Johnson et al., 1977). Arrest probability as perceived by potential users may have some effect on other groups and in other jurisdictions (e.g. Teevan, 1976).

A more representative sample was utilized by Meier and Johnson (1977) to test a complex model of the deterrence of marijuana use. Data were drawn from a U.S. national survey in 1971 of adults 18 and over, in a jurisdiction with severe penalties for cannabis possession (maximum life imprisonment at the time). In a multivariate analysis that incorporated both legal and extra-legal factors, Meier and Johnson found that legal threat was "a comparatively impotent source of compliance" compared to the extra-legal factors of age, fear of physical consequences, and beliefs that marijuana use is immoral (1977:302). The number of friends who used marijuana was the best single predictor of use. Their analysis is marred somewhat by the adoption of measures of perceived certainty and severity of punishment that are of questionable validity since they do not relate the perception of threat to self or "someone like you" (e.g. Silberman, 1976). However, the importance of various personal, social, and attitudinal factors which influence conformity with legal norms governing marijuana use provides further illustration of the need for a broader perspective on general deterrence.

In summary, studies relevant to the prevention of cannabis use in the population-at-large have been reviewed and found to offer little support for the operation of general deterrence. Rates of use in American states which have reduced penalties did not change more substantially than in states which had not. Low actual and perceived probability of arrest, combined with widespread use and acceptability of use, seem to have largely inactivated the threat of punishment, particularly among young people. It was suggested that the effectiveness of the law over time in preventing marijuana use has been progressively diminished. Factors other than legal threat — such as the attitude that the use of cannabis is morally wrong, or disapproved of by peers, or potentially harmful to health — were shown to be important in the decision to refrain from use. In the next section of

this chapter, the specific deterrent findings, pertaining to those who have actually experienced arrest and punishment, will be presented.

Specific Deterrence

For the individual offender, effectiveness of the sanction is assessed in relation to the extent to which the offender has been discouraged from continuing using cannabis after official intervention.¹⁴ Deterrent effect was assessed by a self-report measure of intention to continue use of cannabis in the next year. Of the 95 subjects, 53% answered "very likely," 32% "quite likely," 7% "not very likely," and 7% "not very likely at all" to persist in use; one answered "don't know." The follow-up interviews one year later indicated that intent to use was a highly reliable predictor of actual reported consumption at this time.¹⁵ The benefits of criminalization expressed as the specific deterrent outcome have already been presented elsewhere (Erickson, 1976). This section will review these findings and amplify them in relation to other pertinent data.

The findings of this study run counter to the hypothesis that the more severe and certain the punishment, the greater the deterrent effect. Not only was a more severe type of sanction associated, though not significantly, with the highest likelihood of ongoing use, but also a greater perceived risk of rearrest was displayed by those most determined to continue use. The most important finding was that intention to continue use was strongly related to past frequency of use (i.e. in the year before trial). While at least 85% of the regular user groups were "quite likely" or "very likely" to persist, 64% of the irregular users were "not very likely" or "not likely at all" to do so (Erickson, 1976:228). The absence of support for deterrence hypotheses was repeated when they were examined while controlling for level of use (see Tables 14 and 15). Arrest at the early experimental stage of drug use could be an effective deterrent, as shown by a few cases in the sample. However, 60% had first tried the drug while still juveniles and the average time between initiation of use and sanctioning was five years. Thus, realistically, the deterrent benefits of criminal justice intervention are shown to be negligible for nearly all of those processed.¹⁶

Erickson (1976) did not include an examination of *perceived* severity of sentence nor of offenders' *expectations* regarding sentence. Such factors may possibly add to our understanding of the lack of deterrent effects.

It will be recalled that the sentence awarded, or actual severity, included the three categories of absolute discharge, conditional discharge, and conviction with fine. In law, the conditional discharge requiring a probationary period imposes a greater penalty than the absolute discharge. The fine, requiring the registering of a conviction, is similarly more severe than either form of discharge.

TABLE 14

Likelihood of Cannabis Use after Court Appearance, by Type of Sanction, Controlling for Past Frequency of Use

Likelihood of Subsequent Use**	Frequency of Cannabis Use*					
	Heavy/Moderate			Light/Occasional/Experimental/ Never		
	Type of Sanction			Type of Sanction		
	Absolute Discharge %	Conditional Discharge %	Fine %	Absolute Discharge %	Conditional Discharge %	Fine %
Low	6.7	12.5	6.7	33.3	37.5	25.0
High	93.3	87.5	93.3	66.7	62.5	75.0
Total	100.0	100.0	100.0	100.0	100.0	100.0
(N)	(30)	(24)	(15)	(9)	(8)	(8)

(Total N excludes one "don't know" response)

*Heavy/Moderate = 2 times a week or more

Light to Never = once a week or less

**Low = not very likely/not likely at all

High = quite likely/very likely

However, this "official" weighting of severity may not coincide with the subjective perception of those sentenced and it is the latter aspect that is most likely to affect behavior. Sample members were given a range of seven penalties, all possible for simple possession, and asked to order them from most to least severe (see Table 16). The one-month jail sentence and the heavy fine (\$250) were ranked as most and next most severe. The absolute discharge and conditional discharge (three months probation) were ranked as least and next least severe. What is of particular interest is that the smaller fine (\$50) was placed between the two categories of conditional discharge for 12 months and for three months. In fact, the light fine and short probation are ranked more closely together than any other two items. Offenders apparently do not accept, or may not be aware of, the official advantage of a conditional discharge over a conviction and fine. Given a choice, offenders on the average would consider the smaller fine less severe than the longer probationary period for themselves.

TABLE 15

*Likelihood of Cannabis Use after Court Appearance, by
Perceived Certainty of Rearrest, Controlling for Past
Frequency of Use*

	Frequency of Cannabis Use*					
	Heavy/Moderate			Light/Occasional/Experimental/ Never		
	Perceived Certainty of Rearrest***			Perceived Certainty of Rearrest***		
Likelihood of Subsequent Use**	Low %	Medium %	High %	Low %	Medium %	High %
Low	16.0	3.4	0	40.0	20.0	0
High	84.0	96.6	100.0	60.0	80.0	100.0
Total	100.0	100.0	100.0	100.0	100.0	100.0
(N)	(25)	(29)	(13)	(15)	(5)	(4)

(Total N excludes four "don't know" responses)

*Heavy/Moderate = 2 times a week or more

Light to Never = once a week or less

**Low = not very likely/not likely at all

High = quite likely/very likely

***Low = not likely at all

Medium = not very likely

High = very likely, quite likely

Since the usual fine actually imposed on sample members was \$50 or \$100 and the most common probation period given was 12 months, it seems possible that many of those receiving a conditional discharge might have viewed it as a more severe sanction than a fine, while some of those fined might have considered it preferable to probation. Thus the subjective perception of severity might be at variance with the legal definition for this sample of offenders (see Erickson and Gibbs, 1979). Since the large majority of the sample received sentences in the more lenient range of perceived severity (as in Table 16) any deterrent impact related to sentence variation was limited. An important implication of these findings is that the least costly of the sentence alternatives could have been imposed in all cases without any reduction in deterrent efficacy.

TABLE 16
Perception of Severity of Penalties

Penalty**	Mean Rank, Most to least severe (N = 94)*
Jail, one month	1.33
Fine, \$250	2.79
Suspended Sentence, 12 mos.	3.26
Conditional Discharge, 12 mos.	3.71
Fine, \$50	4.88
Conditional Discharge, 3 mos.	5.04
Absolute Discharge	6.97

*One "don't know" response.

** (Hand Subject Cards)

"These are penalties that can happen to someone taken to court for the possession of cannabis. Put them in order from the *most* severe to the *least* severe, according to how *you* would feel if given this sentence."

A second set of findings relevant to deterrence involves the sentences the sample members anticipated from their court appearances. A more severe sentence than expected might enhance deterrent effects, while a less severe one might dilute the impact. A summary of expected outcome in relation to actual sentence is shown in Table 17. Overall, the sample members were not accurate forecasters of their sentences. While 27 of the 95 respondents were correct as to sentence *type*, only 14 of these accurately anticipated details such as amount of fine or length of probation. Five respondents did not know what to expect. The largest source of error seemed to be the fortuitous absolute discharge. While 33 subjects were expecting a more severe sentence and received an absolute discharge, only five of the 19 who expected discharge, got one.¹⁷

Since the actual consequences were milder than the anticipated ones for nearly half the sample, it was thought worthwhile to create a new variable, a combination of actual and expected sentence severity, and relate it to perceived certainty of rearrest and intention to continue use. Perhaps the finding of a positive relationship between perceived certainty of rearrest and continued use could be understood as an expression of "it can't be any worse a second time than I was already worried about." That is, the sample may have become desen-

TABLE 17

Expected Sentence Severity in Relation to Actual Sentence

	No.	%
Did "better" than expected		
Expected jail, probation or fine, got A.D.	33	
Expected probation or fine, got lighter amount	7	
Expected jail, got C.D.	<u>1</u>	
<i>Sub total</i>	41	43.1
Did "same"* as expected		
Expected A.D. got A.D.	5	
Expected fine or probation, got same*	<u>9</u>	
<i>Sub total</i>	14	14.8
Did "opposite" than expected		
Expected fine, got probation	14	
Expected probation, got fine	<u>1</u>	
<i>Sub total</i>	15	15.7
Did "worse" than expected		
Expected A.D., got fine or probation	14	
Expected fine or probation, got heavier amount	<u>6</u>	
<i>Sub total</i>	20	21.1
Didn't know what to expect	5	5.3
<i>Total</i>	95	100.0

*Same = within \$12.50 for fine or 1.5 months for probation

A.D. = Absolute Discharge

C.D. = Conditional Discharge

sitized to the threat. However, little support for this interpretation was found, as those who did "worse" than expected were just as likely to be undeterred as those who did the "same" or "better," regardless of past use or perceived likelihood of rearrest (Tables 18 and 19).

Since most offenders were not aware, prior to their arrest, that relatively lenient sentencing practices prevailed, they could not

TABLE 18

Likelihood of Continued Cannabis Use by Actual in Relation to Expected Sentence Severity, According to Past Frequency of Use

Likelihood of Continuing Use of Cannabis	Past Frequency of Cannabis Use*					
	Irregular/Light			Moderate/Heavy		
	Actual in Relation to Expected Sentence Severity					
	Better %	Same %	Worse %	Better %	Same %	Worse %
Low	33	50	25	7	—	8
High	67	50	75	93	100	92
Total**(N)	(9)	(4)	(8)	(31)	(10)	(12)

*Irregular/Light = from not at all to not more than once a week
Moderate/Heavy = twice a week or more

**Excludes "don't know" responses and those in "opposite" category, Table 17.

TABLE 19

Likelihood of Continued Cannabis Use by Actual in Relation to Expected Sentence Severity, According to Perceived Certainty of Rearrest

Likelihood of Continuing Use of Cannabis	Perceived Certainty of Rearrest					
	Low: not likely not very likely			High: quite likely very likely		
	Actual in Relation to Expected Sentence Severity					
	Better %	Same %	Worse %	Better %	Same %	Worse %
Low	13	14	19	—	—	—
High	87	86	81	100	—	100
Total*(N)	(30)	(14)	(16)	(9)	0	(4)

*Excludes "don't know" responses and those in opposite category, Table 17.

be considered more careless or intense in their use of cannabis for this reason. Rather they expected a harsher response than they usually received. These findings seem to underscore the general finding in the literature of the relative unimportance of sentence severity in achieving deterrent effects. Well entrenched and long-term cannabis use appears quite resistant to the potential punishments imposed by the criminal justice system.

SUMMARY

This chapter has described some of the costs and benefits of criminalization to the individual, based on the offenders' accounts immediately after their court appearance and sentence for simple possession. Almost all denied thinking of themselves as criminal and thought their friends would share this perception. It was considered more likely by the sample that other significant figures in the home, school, work, and court networks (though still a minority) would view them as criminal. A majority thought this would be true only in relation to the police. More parents knew about the cannabis use than knew about the arrest for it. The unplanned revelation of this information led to disruption of family relationships for some respondents and was a source of anxiety to others who had managed to conceal it initially. Concern about employers' reactions was also expressed. In a few instances, job loss was reported as a result of the charge or court attendance. Disrespect for the cannabis prohibition and for two aspects of the justice system (the police and the courts) was demonstrated, but not a more generalized disrespect for society's laws. Matched against some evidence of costs was the lack of support for specific deterrent effects resulting from the legal intervention. The period of official criminalization was associated with the most immediate effects of sanction culminating with the judge's decision as to the sentence. The next chapter will deal with the more long-ranging consequences in the year after the court appearance.

Notes

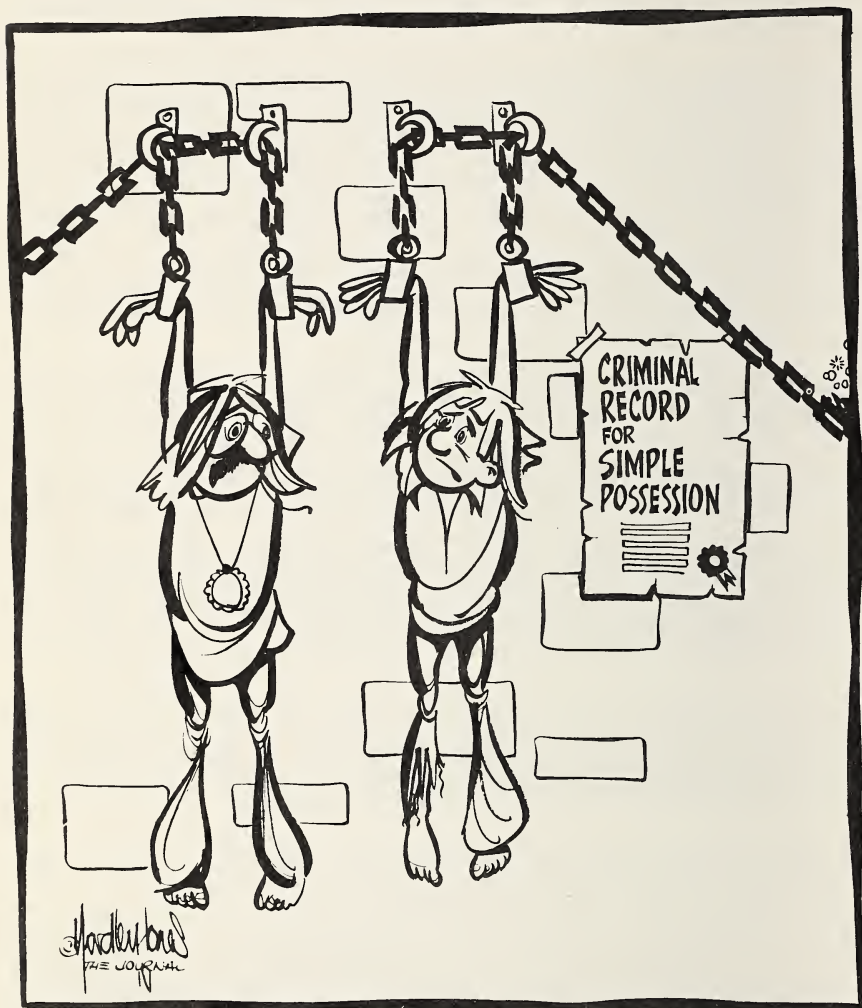
CHAPTER 5: Official Criminalization

- 1 Charges which do not result in discharge or conviction remain in municipal police files as an arrest record and fingerprints, if taken, are stored in the RCMP's computerized facility. The Canadian Police Information Centre (CPIC), a national computer network showing criminal charges, also has the capacity to store records.

- 2 These types of automatic restrictions following conviction are discussed by Damaska (1968) and Leon (1979).
- 3 Although Foster et al. (1972) conclude their work does not support the hypotheses of the labeling perspective, Hepburn (1977:240) points out that their findings support the opposite interpretation.
- 4 The application of a single item indicator for self and other labeling was selected due to time constraints on the interview and also its precedent in other studies (e.g. Jensen, 1972); however, other more complex scales have been devised (e.g. Ageton and Elliot, 1974; Siegal, 1975) which provide possibly a more sensitive test of changed or spoiled identity. Although it would be desirable to know the extent to which the perception by offenders of others' likely reaction to them is congruent with others' actual perception, the confidential nature of this study precluded such an assessment.
- 5 It is possible that these four individuals might have labeled themselves criminals, before being charged, for their "secret" cannabis use or other deviance (see Becker, 1963:31). However, this interpretation seems unlikely in view of the emphasis placed in these subjects' stories on the acts of official response to cannabis.
- 6 The trend of increasing consumption of cannabis in the past decade (Leon, 1974; Rootman, 1979; Smart and Fejer, 1974; Smart and Goodstadt, 1976; Smart et al., 1979) imparts some validity to such statements, but use by those over 30 still remains the exception.
- 7 These strategies suggest the "denial of injury" and "condemnation of the condemners" described as techniques of neutralization by Sykes and Matza (1957), but somewhat modified to apply to a victimless crime.
- 8 Garfinkel's (1956) classic paper referred to conditions of *successful* degradation ceremonies, a point that seems often to have been overlooked by those assuming that negative consequences were automatic. The conditions associated with resisting labels have been explored by Lofland (1969), Thorsell and Klemke (1972), and Rogers and Buffalo (1974).
- 9 Disrespect as a consequence of cannabis prohibition was assumed in both the Le Dain Commission and the Shafer Commission reports, and appeared more recently in the U.S. Strategy Council on Drug Abuse report: "Society pays a relatively high price for this form of deterrence — high in terms of . . . contributing to an

atmosphere which nurtures disrespect for law" (1976:54). These sentiments reflect the concerns of "over-criminalization" expressed by legal scholars such as Packer (1968), Kadish (1967), and the Law Reform Commission of Canada (1976).

- 10 This is a somewhat imprecise item, but true before and after comparisons were not possible.
- 11 The police use of force in the arrest is possibly an expression of an effort to establish their authority in the situation (Hagan, 1972). While general patterns observed in police-citizen encounters might also be observed in cannabis arrests (Black and Reiss, 1970; Reiss, 1971), particular features associated with the operation of drug squads were also noted earlier, in Chapter 4.
- 12 A question about the other law-breaking activities besides drug use that had not been detected was piloted, but seemed to threaten rapport and was discarded.
- 13 The formulation of instrumental-effective is derived from Parsons (1951).
- 14 Benefits might also be considered in the personal, subjective sense of what the offender "learned" from the experience to his or her advantage. Four-fifths of those who intended to continue cannabis use reported that they would adopt various strategies to avoid detection in the future. Changes in practice that were mentioned included both the circumstances of consumption and possession.
- 15 One year later, none in the "very likely" or "quite likely" groups had ceased use, one in the "not likely at all" category had resumed use, and the "not very likely" category was divided between those who had continued use and those who had not.
- 16 The youngest and the heaviest-using members of the sample were not found to be deterred at all.
- 17 A serendipitous finding of this study was that judges, though not aware of offenders' cannabis use patterns, gave absolute discharges disproportionately to the heavier users: 44% as opposed to 36% of the lighter and irregular user group.



from *The Journal*, March 1976

6

Effects One Year Later: Period of Social Criminalization

The consequences following the designation of a criminal label were ascertained by following up the sample members one year after their court appearance and sentencing. After this interval, 90% (N=85) of the original sample were re-interviewed. Those who could not be interviewed for a second time tended to be older, not living with parents, and neither employed nor in school at the first interview. Otherwise respondents and non-respondents to the final interview were very similar. Sample attrition was not related to levels of cannabis use (see Appendix B). Thus the final sample of 85 offenders may be considered representative of the original one with respect to the effects of social criminalization.

As in the previous chapter, costs will be assessed in several areas, as well as benefits in regard to deterrent effects. The topic of subsequent criminality will also be addressed as a separate cost area. In addition to being an outcome measure, the detection of later criminal activity must also be considered an intervening variable since the effects of criminalization may be cumulative. Any deprivation in the personal, social, economic, and legal spheres displayed one year later may be the product of criminal justice system involvement subsequent to the cannabis offense. This would not be such a potentially significant influence if most of the sample escaped detection for other offenses, but 26% had been rearrested and 15% were found guilty of a criminal offense between the initial and final interviews.

COSTS

Subsequent Officially Detected Criminality¹

Respondents were asked to report the number and type of any charges laid since their court appearance for cannabis possession and also the outcome and type of sentence awarded, if any. Their accounts were later compared to official police records and found to be highly reliable. Only three charges (all driving offenses) not reported by subjects were found in official files.

The group's subsequent history of criminal justice system

involvement was quite complex. When asked if they had been charged with an offense since the first interview, 37% (N=31) replied that they had. For more than half (N=19) this had occurred on more than one occasion. When the nature of these charges was explored, it was found that 11 subjects had been charged with crimes against person or property and 12 with illicit drug offenses.² In a broad "other" category were placed 14 subjects whose offenses ranged over drinking, driving, public order, and breach of administrative regulation. Six subjects were charged in more than one of these three main categories. Since the "other" category included the mixture of provincial and federal infractions (mainly driving and/or drinking) that did not warrant exclusion from the sample initially,³ they are treated in this discussion as essentially "non-criminal."

3 grB

Really non-criminal?

The two principal indicators of subsequent criminality were charges and findings of guilt, both for "predatory" offenses (i.e. against person or property) and those involving illicit drugs. Of the 26% of the sample (N=22) who had been charged with such offenses in the year after court appearance, more than half (N=13) had been found guilty at least once and the rest were awaiting trial or the charges had been withdrawn.⁴ Of those sentenced, most had received conditional discharges, fines, or suspended sentences, though three had been imprisoned.

Neither the occurrence of subsequent charges nor findings of guilt were found to be related to the nature of the sentence. Perhaps the 11 subjects who were subsequently charged with offenses against property or persons represent the more truly "criminal" group. Again, they were found to be evenly distributed among absolute discharge (N=3), conditional discharge (N=4), and fine (N=4) sentences for their cannabis possession offense. Although these data cannot answer the question of whether the subjects would have been less likely to commit their later crime or crimes if they had *never* been sanctioned for simple possession, these findings do suggest that the type of sentence given then had little bearing on their later criminal career.

Personal Identity

Other studies have shown that negative self-labeling effects are strongest at court appearance (Siegal, 1975). It may be recalled that immediately after court, 6% of the cannabis offenders (6 of 95) acknowledged thinking of themselves as criminal. By the second interview 20% (17 of 85) did so. This included 14 respondents who did not have this self-perception initially, and three who did. Those who developed a criminal identification in the one-year interval are of greatest interest. This shift in perception was not found to be related to the nature of the sentence (Table 20), but did show a tendency to occur more often among those involved in both detected and undetected law-breaking activities subsequent to the cannabis court appearance one year earlier (Tables 21, 22).

TABLE 20

*Perception of Self as Criminal at Time of Court Appearance
and One Year Later, According to Sentence*

Criminal Self- Perception One Year Later	Absolute Discharge		Conditional Discharge/ Fine	
	Criminal Self-Perception at Court Appearance			
	No %	Yes %	No %	Yes %
No	85	100	81	25
Yes	15	0	19	75
(N)	(33)	(1)	(47)	(4)

TABLE 21

*Perception of Self as Criminal at Time of Court Appearance
and One Year Later, According to Subsequent Charges*

Criminal Self- Perception One Year Later	Subsequent Criminal or Legal Charges			
	None		Some	
	Criminal Self Perception at Time of Court			
	No %	Yes %	No %	Yes %
No	88	33	72	50
Yes	12	67	28	50
(N)	(51)	(3)	(29)	(2)

As Table 23 shows, the shift to a criminal self-perception was related to the type of offense the subject was subsequently involved in. Those who were charged with a criminal offense against person or property were more likely to develop a sense of criminal identity than those who were charged with a drug offense (40% as compared to 27%). In contrast, those whose charge involved a "non-criminal" infraction (usually driving and/or drinking) were much less likely to think of themselves as criminal (15%) and were almost

TABLE 22

Perception of Self as Criminal at Time of Court Appearance and One Year Later, According to When Sold Cannabis

Criminal Self- Perception One Year Later	When Sold Cannabis*			
	Before Court Only		Since Court	
	Criminal Self-Perception at Time of Court			
	No %	Yes %	No %	Yes %
No	73	67	67	0
Yes	27	33	33	100
(N)	(15)	(3)	(24)	(1)

*Excludes 42 cases in which no sale of cannabis, ever, was reported. This data is discussed more fully in Chapter 6, in the section on marketing activities.

TABLE 23

Changes in Self-Perception of Those Who Did Not Consider Themselves Criminal at Time of Court Appearance, According to Type of Subsequent Charges

Self- Perception One Year Later	Subsequent Charges					
	Against Person or Property		Drug Offense		Other Non- Criminal Offense	
	None %	Some %	None %	Some %	None %	Some %
Never as criminal	86	60	84	73	82	85
Always/sometimes as criminal	14	40	16	27	18	15
Total (N)*	(70)	(10)	(69)	(11)	(67)	(13)

*Excludes five cases in which a criminal perception of self was reported at court appearance.

TABLE 24

Changes in Self-Perception of Those Who Did Not Consider Themselves Criminal at Time of Court Appearance, According to Type of Subsequent Criminality

Self-Perception One Year Later	Combined Offenses Against Person or Property and Drug Offenses			
	Charges		Findings of Guilt	
	None %	Some %	None %	Some %
Never	88	67	82	83
Always/sometimes	12	33	18	17
Total (N)*	(59)	(21)	(68)	(12)

*Excludes five cases in which a criminal self-perception was reported at court appearance.

indistinguishable in this respect from their counterparts with no such record. The combined total of those with either predatory or drug charges or both (N=21) also showed this association with criminal self-perception, but no such relationship was found for actual findings of guilt for these offenses (Table 24). Criminal charge rather than "conviction" appeared to be a contributing factor in a shift to a more criminal sense of self.

For a predominantly young group it was thought that their parents' perception of them might be particularly crucial in affecting their self image. Criminal self-perception was examined in relation to the parents' knowledge of the offense and whether they were thought to perceive the respondent as criminal.

Of the 85 subjects who were re-interviewed, 40% reported that their mothers, and 33% that their fathers, knew of the cannabis offense at the time they went to court. In the following year, an additional 18% of mothers and 21% of fathers were reported to have become aware of the original charge and court appearance. The sample was asked at both times whether their parents ever thought of them as criminals. By the time of follow-up, a total of 14% of the mothers and 13% of the fathers both knew of the offense *and* regarded their child as a criminal (according to his or her perception). That is, the actual knowledge by parents was accompanied by a criminal identification of the respondent about one-quarter of the time. When the self-perception of those whose parents thought of them as criminal one year after court was compared to that of the group whose parents

TABLE 25

Changes in Self-Perception According to Parents' Knowledge of Offense and Reported Perception

Self-Perception One Year Later	Parental Knowledge of Offense and Perception of Respondent as Criminal			
	Mother		Father	
	Doesn't know/ Doesn't think as criminal %	Knows and thinks as criminal %	Doesn't know/ Doesn't think as criminal %	Knows and thinks as criminal %
Never as criminal	86	60	86	50
Sometimes/always as criminal	14	40	14	50
Total (N)*	(70)	(10)	(72)	(8)

*Excludes five cases in which a criminal self-perception was reported at first interview.

did not think of them as criminal (whether knowing of the charge or not), a marked tendency was found for parents and offenders to agree on the criminal identification (Table 25).

Social Relationships

After the court appearance, about two-thirds of the sample reported that both parents were aware of their use of cannabis but fewer were also aware of the court case. For many subjects, it was important that one or both these facts be kept from their parents. One concern in the follow-up was to learn how successful they had been, and if not, how their parents had reacted.

Of those in contact with their parents, 9% of their fathers and 6% of their mothers had learned of the cannabis use since the court appearance (Table 26). A fairly substantial minority (19% of fathers and 15% of mothers) still were not aware, according to their offspring. Of those who did know, subjects reported a fairly accepting or tolerant attitude towards this use for about two-thirds of both fathers and mothers. Of the balance, mothers were viewed as more likely to be openly disapproving while fathers were more likely to be non-communicative (Table 27).

With regard to the court appearance, 15 mothers were said to have learned about it in the following year, nine being told by the

TABLE 26

Parents' Knowledge of Respondents' Cannabis Use in Relation to Time of Charge

When Parents Learned of Use	Father %	Mother %
Knew already, before charge	65	73
Found out at time of charge	7	6
Found out in post-court year	9	6
Still do not know	19	15
(N)*	(74)	(81)

*Excludes 10 cases in which father, and three cases in which mother, had no contact with respondent, and one for each in which respondent had never used cannabis.

TABLE 27

Parents' Current Attitude to Respondents' Cannabis Use, If They Know, One Year After Court

Parental Reaction	Father %	Mother %
Don't mind/don't see anything wrong with it/accept	24	26
Tolerate/resigned	41	39
Disapprove/openly critical	14	23
Don't discuss it/don't know what they think	22	12
(N)*	(59)	(69)

*Excludes 26 fathers and 16 mothers when respondents had no contact with parent/had not used cannabis/parents not aware of use/parents deceased.

TABLE 28
*Socioeconomic Status of Respondents and
 Parents as Reflected in Occupation*

Occupational Category*	Mother	Father	Respondents
Professional	1.2	9.4	1.2
Proprietors, Managers, and Officials, Large	1.2	3.5	—
Semi-Professional	2.4	5.9	4.7
Proprietors, Managers, and Officials, Small	8.2	21.2	5.9
Clerical and Sales	30.6	11.8	17.6
Skilled	1.2	21.2	5.9
Semi-Skilled	9.4	18.8	17.6
Unskilled	5.9	7.1	15.3
Homemaker	38.8	—	—
Student	—	—	10.6
Unemployed/None	—	—	21.2
Unknown	1.1	1.1	—
Total (N=85)	100.0%	100.0%	100.0%

*Pineo-Porter, 1967

subject and six learning in some other way. Similarly, 18 fathers then knew about it who had not before, 11 of them being informed by the subject. Other sources of the information included relatives, friends, misdirected letters and calls, and police records. When parents did react negatively, they tended to do so in relation to the charge and the event of going to court. The leniency of the sentence given did not seem to mitigate their response.

A comparison of mother's and father's socioeconomic status with that of the respondent, using the Pineo-Porter (1967) classification, is shown in Table 28. While 15% of fathers' occupations were designated as professional or semi-professional, 25% as proprietor/manager/official, and 12% as clerical and sales, that is 52% in all, only 29% of the sample members then occupied such positions. Similarly, 40% of the fathers worked in skilled or semi-skilled jobs compared to 24% of the respondents. Since nearly a third of the offenders were

students (11%) or unemployed (21%) one year after trial, they could be said to occupy a lower socioeconomic status than their fathers or family of origin. However, the sample members were overall too young and unestablished for it to be concluded that they were downwardly mobile in comparison with their family background. It can be suggested, however, that they were at a rather vulnerable point in the development of an occupational identity. In the next section their employment situation will be more closely reviewed.

Economic Deprivation

One of the major handicaps bestowed on holders of criminal records, in theory, is the interference with life chances. By this is usually meant the loss of jobs, the difficulties in gaining employment, and the closing off of certain educational and thus career paths. Although this negative relationship is often assumed, little is actually known about how the stigma of being an offender operates to impair legitimate opportunities, particularly for those who were not incarcerated (see Schwartz and Skolnick, 1962; Palys, 1976; Erickson and Goodstadt, 1979).

Detrimental effects may result if a potential or actual employer is aware of an applicant's criminal history and responds negatively. Another possibility is that the offender, if feeling stigmatized by having a record, will present him or herself in a different, less favorable way, even to employers who do not know of the record. Accordingly, in the study, efforts were made both to assess the objective situation of the subjects one year after trial and to enquire into their perceptions and handling of their "criminal" status in relation to employers.

At the time of their court appearance, 72% reported themselves in the labor force, employed either full or part-time, 17% were attending school, and 11% were not working or at school. Two-thirds of those interviewed a second time were employed and 13% were at school. The balance of the sample consisted of 14% who were unemployed but described themselves as looking for work and 7% who were doing "nothing" (e.g. travelling, staying home, or engaged in illicit activities). The shift over the year appeared to be towards fewer in school, fewer employed, and an increase in the proportion unemployed. This finding gains importance from the fact that sample retention had favored those in school or employed at the first interview (Appendix B).

When the shifts in position at final and initial interview were examined in relation to sentence, no clear pattern emerged (Table 29). Looking at the employed group at time of trial (the only one that provides an adequate N for comparison) there is almost no difference between those given absolute discharge and those convicted and fined with respect to their move to school or "other" categories.

TABLE 29
*Position at Time of Trial and One Year Later,
 According to Sentence*

Position One Year Later	Position at Time of Trial		
	School %	Employed %	Other %
Absolute Discharge			
School	38	10	—
Employed	50	65	83
Other*	12	25	17
(N)	(8)	(20)	(6)
Conditional Discharge			
School	—	16	—
Employed	80	76	—
Other*	20	8	100
(N)	(5)	(25)	(1)
Fine			
School	33	6	—
Employed	—	69	—
Other*	67	25	100
(N)	(3)	(16)	(1)

*Other = unemployed or "nothing"

Both discharge groups who were in school initially had several members who were employed one year later. This was also true of most of the "other" category sentenced to absolute discharge at trial, while both of the individuals who were not working or at school then, and given a fine or probation, stayed in the "other" category. These results do not suggest that discharge is an advantage over conviction for one's position in life, at least in the short run.

The sample was fairly active in changing jobs during the post-trial year. Most students as well as those in the labor force had sought jobs. While 35% had stayed in one job, 47% had held two or three different jobs, and 15% had four or more (2% had no jobs in the past year). Thirty-eight percent had been studying or working steadily,

TABLE 30
*Number of Jobs Held in Year Following
 Court Appearance by Sentence*

Number of Jobs Since Court Appearance*	Sentence		
	Absolute Discharge %	Conditional Discharge %	Fine %
One/Same	38	27	48
2 or 3	50	60	26
4+	12	13	26
Total (N)	(34)	(30)	(19)

*Excludes two subjects who had no jobs in the past year.

TABLE 31
*Months of Unemployment Since Court
 Appearance by Sentence*

Months of Unemployment Since Court Appearance	Sentence		
	Absolute Discharge %	Conditional Discharge %	Fine %
None*	32	45	35
1 or 2	24	26	15
3	44	29	50
Total (N)	(34)	(31)	(20)

*Includes students.

and 62% had been unemployed at some time during the past year.⁵ This group consisted of 22% for whom the interval of unemployment was up to two months and 40% had not had a job for three months or more. A few in this latter category had been travelling or in jail for part of the year.

These outcome measures — number of jobs held and length of unemployment in the post-trial year — were not found to be related

in any consistent way to sentence (Tables 30, 31). This initial analysis indicates that sentence is not a significant determinant of a subsequent employment situation. Other pre-existing and personal factors, as well as the general economic climate, seem likely to be more influential.⁶

More than three-quarters of the sample members (78%) reported applying for at least one job, and 52% for three or more jobs, since their court appearance. As the consequence of an employer's reaction to their criminal record could be of potentially significant proportions, their interaction with possible employers was considered in more detail (Figure 4).

Of those who reported applying for jobs since court, more than half also remembered being asked if they had a criminal record. Of those asked, 56% denied having one and 44% acknowledged it in some way. Responses to the question did vary by sentence. Of those who did not admit to having a record when asked, 50% were those given absolute discharge, 15% a conditional one, and 35% had been fined, compared to 38%, 50%, and 12%, respectively, of those acknowledging it. Remarks made by those who had received absolute discharges indicated they often did not consider they had a criminal record. Most of those who admitted to a record said they provided accurate details of the offense. This suggests they may have believed a "minor record" for marijuana possession would be less detrimental than an unspecified "criminal record."

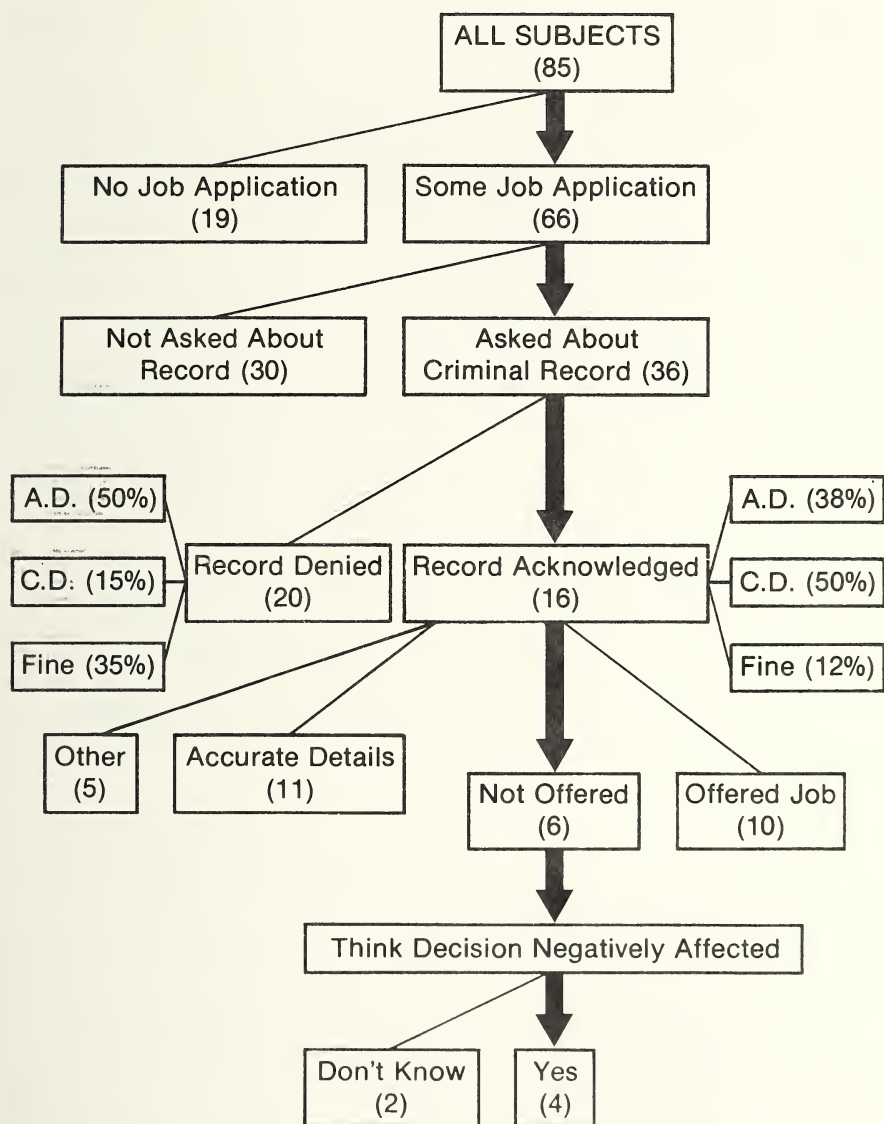
To carry the breakdown in Figure 4 further, in cases where the employer knew of the record, twice as many applicants were offered the job as not. And finally, only one-quarter of the subjects whose history was definitely known to the employer felt that the employer's decision to hire them was negatively affected by the fact of a record. These accounts of subjects' actual dealings with potential employers do not support a conclusion that the record was highly detrimental when acknowledged. Of course, it could not be determined if employers had checked and discovered the record unbeknownst to the respondent, and reacted negatively.

There were no cases where bonding or a current job was known to be lost as a result of the revelation of the record in the year subsequent to trial. However, it should not be forgotten that more than half of the job-hunters who were asked about a record did not admit or were not aware of having one. Conversely, since almost half of those seeking employment were never asked this question, it would appear that a record was not that pertinent to many of the types of positions for which sample members applied. These were mainly of a semi-skilled or unskilled nature.

All the subjects were asked the more general attitudinal questions about an employer's right to be informed of their criminal record and about an employer's likely reaction to such knowledge. Of

FIGURE 4

*Pattern of Subjects' Interaction with
Potential Employers in Relation to Record*



the total respondents, about 85% of those fined or placed on probation expressed the view that employers had no right to know their record for simple possession; 71% of those given an absolute discharge felt this way. While 40% of the total sample thought employers would generally object to someone with a record working for them, regardless of the offense, 51% perceived employers as not caring about a record only of marijuana possession; 9% said they did not know how employers would react.

The findings presented in this section suggest that while the objective employment situation of sample members had declined over the past year, it was not conspicuously traceable to the record itself. However, those subjects who were convicted and fined perceived their records as especially problematic, perhaps because they were more certain than those discharged that they had one. Some strategies adopted included denying it and relating details to play down its importance. What the interviews do suggest is that for offenders who have no secure occupational position, particularly the younger and less educated, a record is at best something they hope will go unnoticed or overlooked, and at the worst will intrude into their future prospects in a manner unknown and uncontrollable by themselves. Subjects' own accounts of job-hunting experiences, though only for a one-year period, did provide a limited account of difficulties with employers' in the short-run.

The difficulty in generalizing from this employment history data based on subjects' accounts lies in the great variety of positions and procedures they were exposed to in seeking employment. Some filled out standard forms, others were interviewed, others submitted resumés, and the question regarding record was put in a number of different ways as well. The employer's response to an applicant who is also a cannabis possession offender is best gauged by a controlled field experiment.

* Such a study was conducted by Erickson and Goodstadt (1979) in which experimental conditions of conviction, absolute discharge, and no record were randomly assigned when responding to 120 vacant positions advertised in daily papers in Toronto. In both criminal history conditions, the offense of cannabis possession was specified. The principal finding was that the number of favorable replies declined significantly as seriousness of criminal record increased. In the "no record" group, 87.5% received positive responses compared to 67.5% with absolute discharges, and 45% of those convicted and fined. The authors concluded that while a discharge reduced the harmful impact of criminalization on employment opportunities compared to conviction, it was not the same as not having a record. The actual sample of offenders, in preferring that employers not know of their record, appeared to be realistic in their appraisal of likely negative repercussions.

Disrespect for the Law

As in the prior chapter, legal costs will be assessed in relation to disrespect engendered for the law at three levels of generality — the offense-specific prohibition, the functioning of the criminal justice system, and the law in society.

Disrespect — Marijuana prohibition

When asked their opinion on the statement, "Marijuana use should be against the law," 95% had disagreed at the first interview and 92% disagreed one year later. Thus, little change had occurred in relation to accepting the legitimacy of the specific prohibition against cannabis. Sentiments were less forcefully expressed at follow-up in that a smaller proportion "strongly disagreed" than at the time of court appearance (37% compared to 65%). When these attitudes to the illegality of cannabis were related to levels of use at both times (Erickson and Single, 1977), it was found that respondents were more likely to change their attitude to conform to their behavior than vice versa. These findings suggested that attitudes disrespectful to this particular law are more a consequence than a cause of increased use, at least in a sample of sanctioned offenders.

Disrespect — Criminal justice system

Disrespect for the criminal justice system may be manifested as a perception of uneven sentencing by the courts. A question asked during the first interview as to whether sample members perceived their sentence outcome as the same or different, and if so more or less severe than was usual in their type of case, was repeated during the second one. A general shift had occurred in all sentence groups away from impressions of less severity to consistency, or from consistency to more severity, (Table 32). Those who considered their absolute discharge "less severe" at the time of sentencing tended to see it now as "same" (58%). Of recipients of conditional discharge who viewed it as the "same" before, 44% perceived it as "more severe" one year later, and a similar but less marked pattern was shown in the fine category (18%). Most who considered fine or conditional discharge "more severe" the first time kept this impression. Five of the six subjects who had viewed these sentences as "less severe" now saw them as "same" or "more severe." It appears that perceptions of sentence likely to be awarded others were more realistic about a year after trial than they were at the time. As time passed, those who received absolute discharges were more likely to perceive their sentence as the same than as less severe as others got, while those who received fines or probation saw them as more severe. This trend was not completely consistent, as some did shift in the opposite direction.

When asked a direct question at the final interview about fairness of sentence, 91% of those receiving absolute discharges, in contrast to 42% of those put on probation and 35% of those fined,

TABLE 32

Comparison of Perceived Consistency of Sentence at Time of Trial and One Year Later, According to Actual Sentence

Perception of Sentence One Year Later	Perception of Sentence at Time of Trial		
	More Severe %	Less Severe %	Same %
Absolute Discharge			
Different than others:			
More severe	—	—	—
Less severe	—	42	21
Same	—	58	79
(N)	—	(12)	(14)
Conditional Discharge			
Different than others:			
More severe	78	—	44
Less severe	11	33	6
Same	11	67	50
(N)	(9)	(3)	(16)
Fine			
Different that others:			
More severe	80	67	18
Less severe	—	—	9
Same	20	33	73
(N)	(5)	(3)	(11)

Missing observations = 12

thought their sentence was fair. It could not be determined precisely from where the more accurate perception of sentencing practices, that may have contributed to their assessment as unfair and inconsistent one year later, was derived. It should be noted that since interviewers provided no information in this regard, unless specifically asked and then *only* at the completion of the final interview, it was not a "testing effect." Comments offered by subjects encourage speculation that awareness of the popularity of absolute discharges among Toronto judges was acquired in the following year from friends and acquaintances who had gone to court, from their own trips, or from the media. It may be recalled that only 20% of the original sample had

expected an absolute discharge and 42% had received one. But a year later, it was this absolutely discharged group who were much more likely to consider their sentence "fair" than those who had received fines or probation. The unevenness of sentencing practices for this offense appears to have generated a sense of injustice and disrespect for the courts in offenders who were more severely sanctioned.

The second area of disrespect for the operation of the criminal justice system that may develop is towards law enforcement officers. At the time of the court appearance, some of the group reported a more negative attitude to the police as a result of their arrest. It was therefore of interest to learn of any further encounters with police. In the following year, 80% of the sample had experienced some additional police initiated contact in the form of being stopped or approached by them.⁷ For nearly half it had occurred once or twice only (N=33) and for the balance three or more times (N=35). In four cases the contact had been out-of-province. Both their person and their car had been searched more often than not, about 60% of the time. To 41% of the contacted respondents' knowledge, the police were never aware of the cannabis record by the end of the contact and in the balance of cases it was introduced at some point. Either police officers asked the respondents and were told the truth, or they already knew subject and history personally, or they checked on the police radio system (linked to CPIC, a central computer registry) and learned of the record.

At follow-up, sample members were asked how they felt now about the police, and 60% reported a generally favorable attitude and 40% an unfavorable one. Of those who had indicated no change in their sentiments to the police at the first interview, 68% looked on them favorably one year later. However, of those who had reported feeling more negative about the police after the charging incident, 40% now had a favorable attitude; for the balance, the hostile or distrustful feelings remained. When attitude to the police at follow-up was related to post-trial contacts with the police, it was found that an unfavorable attitude was more likely to be retained in direct proportion to the number of subsequent interchanges with officers (Table 33). Of the original more negative group, 40% of those with no subsequent contacts had retained this attitude, compared with 55% of those who had one or two contacts and 86% of those who reported three or more. In contrast, those whose attitude to the police was said to be unaffected by the arrest incident were also almost equally unresponsive to additional police contacts. These findings suggest that the more negative attitude to the police that can develop as a result of the cannabis arrest is not always permanent, but ensuing contacts with the police may serve to reinforce it.

Disrespect — Law in society

The three attitudinal items pertaining to respect for the law in general were asked again (see Chapter 5). As at the first interview,

TABLE 33
*Attitude to Police One Year Later by Attitude Change
 at Time of Court Appearance, According to Number of
 Subsequent Police Contacts*

Attitude to Police One Year Later	Number of Contacts with Police in Post-Court Year					
	None		1 or 2		3 or More	
	Reported Change in Attitude to Police as a Result of Arrest					
	More Negative %	No Change %	More Negative %	No Change %	More Negative %	No Change %
Favorable	60	73	45	67	14	67
Unfavorable	40	27	55	33	86	33
Total (N)*	(5)	(11)	(11)	(21)	(7)	(27)

*Excludes two "don't know" cases and one case in which a more favorable attitude was reported as a result of arrest.

TABLE 34

Comparison of Respondents' Perceptions of Seriousness of Offense with That of Judges

Cannabis Offenders (N=85)		
Areas Ranked in Order of Seriousness (Most to Least)	Mean Response	Rank
Armed robbery	1.73	1
Assault causing bodily harm	2.74	2
Control of hard drugs (e.g. heroin)	2.76	3
Fraud	4.11	4
Break and enter (dwelling)	4.24	5
Theft under \$200**	5.79	6
Public drunkenness	6.99	7
Cannabis control	7.49	8
Judges (N=70)*		
Comparable Offenses	Rank	
Armed robbery	2	
Assault causing bodily harm	5	
Trafficking in heroin	1	
False pretences over \$50	6	
Breaking and entering	3	
Theft under \$50**	7	
Causing disturbance***	8	
Trafficking in marijuana	4	

*Reported in *Cannabis* (1972:247) from an interview study of Ontario magistrates done in 1970.

**Lower limit raised from \$50 to \$200 since 1970 (C.C. s.294).

***Definition of offense includes public drunkenness (C.C. s.171).

general respect for the law was found to be very high, with more than 90% in agreement that "it's important that people in a society respect most of its laws," "people should [not] break laws they disagree with," and "most laws are worth obeying." A fourth question, asked only at follow-up, was, "Do you agree or disagree that laws that are openly broken weaken respect for authority?" It was found that 17% strongly agreed and 69% agreed with this statement. This suggests that a somewhat different aspect of respect, directed at "authority" rather than "the law" is believed by this group to suffer when law-breaking is widespread.

A second approach to the assessment of the group's general respect for the law was to contrast their views on the relative seriousness of illicit activities with those of judges. The subjects were asked to rank eight offense areas in order of seriousness. These rankings were compared with those provided in a 1970 study of Ontario judges (Table 34). Except for different positions of drug offenses, the average ranks do not differ markedly. Heroin distribution was ranked first by judges and very close to second by offenders; cannabis control was considered least serious by the offender group but trafficking in marijuana was ranked fourth by judges. The offenders were more likely to place the direct predatory-against-person offenses (armed robbery and assault causing bodily harm) higher than the judges, who placed the offense of break and enter higher than assault. Public drunkenness was ranked very low in seriousness by both groups. As was suggested in the discussion in the previous chapter (see Table 12 on penalties deemed appropriate for various offenses), the sample appears to have adopted quite a conventional stance to crimes other than cannabis use and sale. Offenders perceived the relative seriousness of offenses somewhat differently than did judges, but were still not hesitant about making this differentiation one year after their court appearance. Presumably if they had come to deny the legitimacy of all law, they would have been unwilling or unable to discriminate between crime categories. The results provide further evidence that those prosecuted for cannabis possession do not develop a generalized disrespect for the law. Goode (1970) and Plant (1975) documented similar findings for cannabis users without criminal records.

Loss of Rights and Privileges

Of the three sample members who had landed immigrant status, none had been deported. One reported a visit and warning from Immigration Department officials.

Since so few respondents had travelled outside of Canada, and these mainly across the border to the United States, it was difficult to ascertain the extent of any interference with travel rights. If a subject admitted to the record, as this case illustrates, problems might arise:

I told the border guard I had a record for marijuana, and he wouldn't let me cross. So I went to another place and I didn't tell them and got across.

No respondents reported any difficulties with obtaining passports, but again few had applied. The ones who had gone abroad since court had no problems to report. Since many had plans to travel in the "next few years," a longer range study would be required to assess more fully any complications in this area. After one year they were minimal. On the whole, there was little evidence of deprivation of rights and privileges in the short run.

The Offender's Subjective Perspective

To gain some insight into the subjective importance of the event over time, subjects were asked whether they had ever thought about the experience of being charged and taken to court in the year since it had happened. For some, the memory seemed to have faded quickly, as 37% said they "never" thought about it. Almost all of the remainder (60%) acknowledged thinking of it "occasionally," mainly when the topic came up in a casual conversation, while only three individuals reported "often" dwelling on it. The extremes of reaction are typified by the cases of "Robert" and "Daniel" (see Appendix C).

Another area where personalized response is of interest was the subjects' handling of sentences which imposed additional penalties i.e. conditional discharge with probation and conviction with a fine. Many variations in the fulfillment of the probation requirement were reported. Some judges had ordered non-reporting probation and others had required the offenders to report. For one-third of those given a conditional discharge, probation was terminated before the specified term was completed. The procedure adopted by probation services varied in frequency and method of reporting. For example, one subject visited the probation office once a month and was terminated after six months of his 12-month sentence, while his co-accused phoned into the same office once every month for a year. Most respondents perceived the necessity of physically attending at an office "a nuisance" and "a waste of time." Few repercussions seemed to be attached to missing visits or being charged subsequently. No official action was reported in any case and no discharge was revoked (a possibility available in law).

Nearly a quarter reported some threats, however, as this case illustrates. A respondent who received four discharges for marijuana possession in less than two years, the second a conditional discharge placing him in our sample, described his experience with his probation officer this way:

When I was charged [the third time] I told my probation officer a few days before it came up and he said, 'You're in real trouble this time. . . . Once the case is disposed of I'll have to take you back to court on the other charge.' When I told him I got a discharge, he said I was lucky (and didn't do anything). I didn't tell him about the fourth charge.

That the probation services were not the only criminal justice personnel to overlook breaches of conditional discharge provisions was further illustrated by this same subject's meeting with the police, some time after his fourth charge.

We were drinking beer in the park and the police pulled up. They checked us out on their radio, and

then said, 'O.K. boys, we know you're on probation for marijuana, now you're breaking probation by drinking in a public place.' We said, 'Oh we're trying to cut down on marijuana — that's why we're drinking beer.' The cop said, 'You know any pushers?' and we said, 'You got all the guys I know in jail.' So they let us go, saying, 'You owe us one, you hear about any pushers you tell us, O.K.?' 'Sure,' we said.

The accounts of the subjects given conditional discharges suggest they perceived little benefit from the probation process, and broke conditions (most obviously that of refraining from cannabis use) without official repercussions.

For those who were fined, difficulties were posed by the inability to produce the money within the time allowed. This affected one-quarter of those whose sentence was a fine. All but one got an extension and eventually paid it; this one individual went to jail for non-payment. Thus while fines were seen as a less intrusive penalty than probation by the subjects, the likelihood of official follow-through for non-compliance seems greater. Potential liabilities are associated with both dispositions which are not possible with an absolute discharge.

Drug Use and Marketing

Another potential cost area is the intensification of the deviant activity. Does criminalization for cannabis use contribute to escalation of other forms of drug-taking and to involvement in the marketing of illicit drugs?

The association between cannabis and other drug use is shown in Table 35. The correlations between frequency of cannabis use at the initial and final interviews, and reported frequency of use of seven other categories of drugs at time of follow-up, were all positive (with the exception of a weak negative relationship between speed injections and cannabis use at follow-up). The small sample size, however, tempers the significance of the correlations. An association between cannabis and psychedelics (+.57), and to a lesser extent cannabis and alcohol (+.23), was displayed at the time of the final interview. Also documented were the correlations between cannabis and cocaine use (+.29) and to a lesser degree, oral speed (+.21) and opiate smoking/sniffing (+.19). Frequency of cannabis use at the time of the first interview showed an association with all forms of drug use a year later with the exceptions of speed and opiate injections. In fact, the latter two were stronger correlates of each other (+.27). Measures of association must not be taken to imply causal statements, but these data do reiterate the general conclusion that "multiple drug use is the rule rather than the exception among those who use drugs, whether their use is . . . licit or illicit" (Le Dain, 1973:750; Leon, 1977:8).

TABLE 35
Drug Use and Marketing Correlations

	a	b	c	d	e	f	g	h	i	j	k	l
a Cannabis t ¹	1.0	.72**	.44**	.26*	.15	.25*	.03	.33**	.34**	.43**	.38**	.09
b Cannabis t ²			.57**	.21	-.02	.19	.05	.29*	.23	.46**	.39**	.10
c Psychedelics				.25*	.00	.17	.10	.25*	.28*	.23	.42**	.22
d Speed (oral)					.32**	.39**	-.06	.36**	.10	.17	.36**	.31*
e Speed (inject)						.25*	.27*	.21	.12	.21	.22	.31*
f Opiates (smoke or sniff)							.28*	.43**	.10	.23	.35**	.36**
g Opiates (inject)								.03	.08	.14	.23	.33**
h Cocaine									.10	.23	.24*	.18
i Alcohol										.11	.11	-.05
j Buy cannabis											.33**	.17
k Ever sold cannabis												.52**
l Ever sold other drug												1.0

* l.s. from .01 to > .001

** l.s. ≤ .001

At the initial interview, when respondents were asked if they had ever purchased cannabis themselves, 91% acknowledged doing so. Of those who had, 64% reported buying cannabis once a month or more often in the past year, 26% did so less frequently than every month, and 10% had bought it only once. At follow-up, subjects were again asked if and how often they had bought cannabis on the average since their court appearance. Nearly 84% reported some purchase of the drug in the interim. Of those involved in buying in the most recent period, 52% had done so at least once a month, 42% on more than one occasion but less often than every month, and 6% once only.

Thus the proportion actually taking part in the purchase of cannabis appeared to have declined somewhat in the post-court year, and those buying it had done so rather less frequently than in the year before their court appearance. The decline in frequency of cannabis purchases could be related to the lower overall frequency of use recorded in the year after trial (see p. 131).⁸ In this context, it may also be noted that one-third of the sample reported spending *less* time with cannabis-using friends than the year before, compared to 9% who said such contact had increased. The reduction in buying incidents also could reflect, in part, a pattern in which some users bought larger amounts less often, or bought concentrated forms of the drug that last longer, in order to reduce the risk of detection that accompanies dealer contact. It was not suggested by users in the final interviews that the drug was less available than the year before, but large price increases were mentioned by some — another possible influence on demand.

Buying
But
reasons
for it
vary

At the follow-up interview, the 85 respondents were asked if they had ever sold marijuana or hashish to anyone. "Selling" was defined as a transaction that financially benefited the respondent, either through direct excess profit or by subsidizing his or her own supply of the drug.⁹ Applying this definition, half of the sample (N=43) had sold cannabis at some time. Of these, nearly one-quarter reported doing so one to three times and the rest more frequently. The other half who had not "sold" by this definition (N=42) included nine respondents who acknowledged non-profit exchanges with their friends (i.e. giving it away), an action that is encompassed in the legal definition of trafficking. These respondents certainly did not consider themselves "dealers," nor did those who acquired relatively small amounts which they distributed to their friends at a price raised just enough to finance their own share. The term "dealer" was reserved for those who operated at a higher level of the distribution chain, where quantities were greater and contacts extended beyond one's immediate friends.¹⁰ A few such individuals were numbered among the respondents.

The sample members who had reported ever selling cannabis (N=43) were asked when this had occurred relative to their

court appearance on the simple possession offense. While 42% indicated they had engaged in selling activities at some time in the period prior to but not since their trial, another 11% had done so in the post-trial year for the first time, and for 47% selling had occurred both before and after their court appearance. Of the entire sample of 85, 28% said they had sold drugs other than cannabis at some time, but details of this activity were not pursued in any detail.

The interrelationships of drug use and buying and selling activities are shown in Table 35. The frequency of cannabis use at both time periods was significantly correlated with ever buying or selling cannabis, but not to selling other drugs. Although both buying and selling cannabis did correlate positively with the use of the other illicit drugs and alcohol, the stronger association was between using and selling. Sale of other drugs was significantly related to all forms of speed and opiate use. These findings suggest that further explication of the relationship between using, buying, and selling might well be pursued with these data.

The (subcultural) hypothesis of drug escalation places involvement in illicit marketing activities as a central link between cannabis use and the use of "hard" drugs (Goode, 1972; Johnson, 1973; Single and Kandel, 1978). The illicit status of cannabis exposes the user to the opportunity to sell it and other prohibited drugs, and acquire friends who have used more "dangerous" substances. It is this process which explains why the cannabis user is more likely to have also used "hard" drugs. According to this model, the relationship between cannabis use and the use of other drugs would be greatly reduced when marketing activities are held constant. Data describing these interrelationships in the offender sample are presented in Table 36 for six types of illicit drugs. The three separate indicators of involvement in marketing are buying of cannabis, selling of cannabis, and selling of other drugs. The selling of cannabis or another drug was dichotomized into ever-never categories. Since almost all sample members had bought cannabis at some time, buying cannabis was divided into more frequent and less frequent purchase.

The findings are, first, that those involved in marketing were more likely to have used other drugs, at both levels of cannabis use. This relationship was consistent for all types of drugs used, with the exception of psychedelics and speed injection by high frequency cannabis users. Here, 100% had used psychedelics at some time, regardless of whether they had ever engaged in buying and selling activities. Injectors of speed were less likely to have been frequent purchasers of cannabis, and were nearly as likely not to have sold cannabis or other drugs as to have done so.

The second set of findings from Table 36 relates to variation by type of drug. For the more frequent cannabis users, there was a

TABLE 36

Use of Various Illicit Drugs, by Frequency of Cannabis Use, According to Involvement in Buying and Selling Activities

Three Indicators of Involvement in Marketing	Percent Offenders Ever Used Other Illicit Drug									
	Low Frequency of Cannabis Use*									
	Psyche- delics	Cocaine	Speed (Pills)	Opiates (Smoke, Sniff)	Speed (Inject)	Opiates (Inject)	Total			
	% (N)	% (N)	% (N)	% (N)	% (N)	% (N)	% (N)			
a. <i>Buying of Cannabis</i>										
Never or under once a month	55 (15)	30 (8)	33 (9)	30 (8)	22 (6)	4 (1)	(27)			
Once a month or more	100 (7)	57 (4)	57 (4)	57 (4)	57 (4)	14 (1)	(7)			
b. <i>Selling of Cannabis</i>										
Never	52 (13)	28 (7)	28 (7)	24 (6)	20 (5)	0 (0)	(25)			
At some time	100 (9)	55 (5)	67 (6)	67 (6)	55 (5)	11 (2)	(9)			
c. <i>Selling of Other Drug</i>										
Never	56 (14)	28 (7)	32 (8)	24 (6)	16 (4)	0 (0)	(25)			
At some time	100 (9)	55 (5)	55 (5)	67 (6)	67 (6)	22 (2)	(9)			

		High Frequency of Cannabis Use**					
a. <i>Buying of Cannabis</i>							
Never or under once a month	100 (20)	55 (11)	55 (11)	40 (8)	30 (6)	5 (1)	(20)
Once a month or more	100 (31)	61 (19)	55 (17)	48 (15)	26 (8)	16 (3)	(31)
b. <i>Selling of Cannabis</i>							
Never	100 (17)	41 (7)	41 (7)	29 (5)	23 (4)	0 (0)	(17)
At some time	100 (34)	68 (23)	62 (21)	53 (18)	29 (10)	12 (4)	(34)
c. <i>Selling of Other Drug</i>							
Never	100 (36)	50 (18)	44 (16)	36 (13)	25 (9)	3 (1)	(36)
At some time	100 (15)	80 (12)	80 (12)	67 (10)	33 (5)	20 (3)	(15)

*Low = less than twice a week

**High = twice a week or more

decline in experience from "soft" to the more "hard" forms of drug-taking. This pattern applied both to those less involved and to those more involved in marketing. For example, of those who had never sold cannabis, 100% had used psychedelics, 41% cocaine and speed pills, 29% opiates by smoking or sniffing, 23% speed injections, and none had had opiate injections. Of those who had sold cannabis, 100% had used psychedelics, 68% cocaine, 62% speed (pills), 53% opiates (smoke, sniff), 29% speed (inject), and 12% opiates (inject). A similar decline in the experience with these drugs was displayed for less and more frequent buyers of cannabis, and never and ever sellers of other drugs. This trend was less apparent for the lower frequency cannabis users, although it applied to the extremes of psychedelics and opiates (inject). However, for cocaine, speed (pills), opiates (smoke, sniff), and speed (inject), at a given level of marketing involvement, there was very little difference in proportions who had ever used any of these drugs. These findings might suggest that heavy users of cannabis are somewhat more discriminating in their patterns of other drug use.

Finally, in considering the difference between lower and higher frequency cannabis users in their use of other drugs, when marketing involvement was controlled, qualified support for the drug escalation hypothesis was displayed. Considerable importance was attached to the type of drug. The relationship between cannabis use and other drug use showed the greatest reduction for psychedelics and opiates (inject), where no or almost no differences were found in the proportions of both low and high users trying these drugs. Heavier users of cannabis were more likely than lighter users to have tried cocaine, even when selling of cannabis and other drugs was held constant, but the opposite was true of speed injectors. ~~No clear pattern was found for oral ingestion of speed or opiates.~~ The subcultural interpretation of drug escalation also holds that selling is a more important link than buying, and this was demonstrated in the data by the absence of a marked difference in use of any of the other drugs by those who bought cannabis once a month or more, in both low and high frequency categories of cannabis use.

Limitation
to the
data

A limitation of these data as a test of the escalation hypothesis is that cannabis use levels in the offender sample were generally higher than would be expected in a more representative sample of young persons. Thus the support shown for the subcultural escalation model in this study might be modified in a sample containing non-users or more low frequency users (Single and Kandel, 1978). However, the criminalization experience could not be assigned a causal role in accelerating the involvement with other drug use and marketing.

BENEFITS

In the final interview the same questions relating to

deterrent effects were asked as at the first one, as well as several questions pertaining to the respondent's legal knowledge. A fundamental assumption of classical deterrence doctrine is that potential offenders are aware of the actual risks and shape their behavior accordingly. More contemporary writers have pointed out that the *subjective* perception of penalty and risk are the crucial factors (Andenaes, 1974; Waldo and Chiricos, 1972; Erickson, Gibbs, and Jensen, 1977; Meier and Johnson, 1977; Silberman, 1976). Since all this sample had experienced an official response based on cannabis use, their perception would have been based on a more concrete reality than is possible for users who have not been criminalized. As users generally have been found to be more knowledgeable about the law than non-users (Waldo and Chiricos, 1972), criminalized users might be expected to be even more aware of legal penalties.

During the interval between the subjects' court appearance and follow-up, the government introduced new cannabis legislation. As described in Chapter 2, this Bill (S-19) proposed to move cannabis from the *Narcotic Control Act* to the *Food and Drugs Act* and reduce maximum penalties; however, it was never passed into law. The existence of the Bill and the debate on it, which received extensive press coverage, provided an opportunity to assess its transmission as legal knowledge to the sample members. First the accuracy of the knowledge will be examined before turning to the deterrence findings.

Legal Knowledge

Respondents were asked the open-ended questions:

What is the maximum or heaviest sentence a person could get now in Canada if convicted (i) of possessing marijuana? and (ii) for trafficking in marijuana?

Under the *Narcotic Control Act*, imprisonment for (i) seven years and (ii) life, respectively, are the maximum allowable sentences. With regard to possession, two said they didn't know and of the balance of the sample, half responded with some form of a jail term. One said a discharge and the remainder answered fine (36%) or probation (12%). In contrast, 91% of the sample (excluding six "don't know" replies) thought a jail sentence could result for trafficking.

When questioned further on the maximum number of months or amount of fine that would accompany the selected outcome, only 11 of those responding (28%) specified the technically correct seven-year maximum for possession when treated as an indictable offense. Most specified a shorter sentence. The heaviest fine sentence believed possible for possession was less than the \$2,000 allowed on summary conviction for a second offense according to all but 5% stating this option. For trafficking, penalties were similarly under-

estimated with only 10% of those who thought imprisonment could result correctly choosing a life sentence; nearly three-quarters thought 10 years or less was the maximum.

It should be noted that the sample's responses regarding maximum sentences for possession and trafficking were a much more accurate reflection of sentences *actually* being awarded than they were of those technically available in law. Perhaps the wording of the question encouraged this interpretation. It is also possible that to the lay person, what is known or believed to be the practice represents "the law" much more than the abstraction "on the books." If the latter is so, the leniency of the courts relative to the actual laws may serve to dissipate, to some extent, the disrespect and perhaps overt opposition that might otherwise be directed at the application of such harsh provisions.¹¹

After the open-ended questions about maximum sentence, the sample were asked if they knew the "name of the law which governs cannabis now." Nearly half (41%) stated they did not know, and of those who ventured an answer, twice as many named the *Food and Drugs Act* as the *Narcotic Control Act* (36% as compared to 18%; 5% made some other response).

Finally the sample was presented with a card containing six statements and asked to select the one which most accurately described "the law about simple possession of cannabis in Canada today." These statements and the responses are shown in Table 37. The same proportion said they didn't know or rejected all the alternatives (15%) as selected the correct one. In all, 19% chose the *Narcotic Control Act* options and 63% those of the *Food and Drugs Act*. Thus it would appear that a majority of the sample believed that Bill S-19 had in fact been passed and become law. The *Food and Drugs Act* statement referring to the penalty of a fine up to \$500 reflects Bill S-19 as it was originally introduced in November of 1974. Since the follow-up interviews did not commence until the summer of 1975, all of the sample could have been aware of this proposal. The other *Food and Drugs Act* statement, describing the discharge and automatic pardon, resembles the Senate amendment to the original Bill. Although the Senate did not finalize its amendments and forward the Bill until early 1976, its deliberations were publicized throughout 1975 and this particular one could have come to the sample's attention as well. Knowledge of the pardon provision was minimal.¹²

Thus these offenders, who might have been expected to have a heightened awareness of the law due to their experience, were found to greatly underestimate allowable penalties and to have assumed a legal change that had not actually been passed. Since any influence exerted on their behavior by the law will be in relation to what they *think* it is (whether accurately or not), the question of who has the responsibility for dissemination of accurate legal knowledge is raised

TABLE 37

Responses to the Question, "Which of the following statements most accurately describes the law about simple possession of cannabis in Canada today?"

	Distribution of Responses
Under the <i>Narcotic Control Act</i> , the penalty is a fine of up to \$1,000 for a first offense.	4%
Under the <i>Narcotic Control Act</i> , the penalty on summary conviction is a maximum of six months imprisonment and/or a fine of up to \$1,000 for a first offense.*	15%
Under the <i>Food and Drugs Act</i> , the penalty is a discharge and automatic pardon for a first offense.**	31%
Under the <i>Food and Drugs Act</i> , the penalty is a fine of up to \$500 for a first offense.***	32%
Only an offense if consumed in a public place.	4%
None of the above.	13%
Don't know.	2%

*Legally correct response at both initial (1974) and final (1975) interviews

**Passed as a Senate amendment to Bill S-19 in 1975

***Provision of Bill S-19 as originally introduced to Senate in late 1974

by these findings. Henshell (1978) has discussed the public's knowledge of penalties and implications for deterrence.

Deterrent Effects

One year after court, the level of cannabis use remained high though heavy consumption had decreased somewhat. The proportion using cannabis twice a week or more was then 60% compared to 72% at the time of the first interview. Only 8% reported no use at all in the past year and another 8% had used it once a month or less. The balance of 24% used cannabis up to once a week on the average. Reasons given for the reduction in intensity of use were typically related to changes in lifestyle and greater maturity (see Brown et al., 1972).

When asked how likely it was that the respondent would use or continue to use cannabis in the next year, 89% responded "very likely" or "quite likely." Two percent said "not very likely," 8% "not likely at all" (the same 8% who reported no use in the past year), and 1% or one individual said he "didn't know." Thus for a small minority, use appears to have been discontinued permanently, while for the large majority relatively frequent cannabis use patterns persisted and were projected to continue.

One interesting relationship that can be examined with the follow-up data is that between level of use and beliefs as to the maximum penalty available *in law* (Table 38), and as to the most likely penalty for *oneself* if caught again for this offense (Table 39). Sample members who believed (accurately) that jail was a possible outcome also tended to be those with the highest use level. While 24% who thought some non-jail sentence was the maximum were in the lowest use group, only 7% of those who chose the more severe penalty were in the least frequent use group. This goes against the expectations of deterrence doctrine but supports the finding of Waldo and Chiricos (1972) that marijuana use was most frequent among those who had the most accurate perception of the severity of the law and less frequent among users who tended to underestimate the penalties. However, no clear pattern was evident when one examined the relationship between use level and expected severity for *oneself* if charged again (Table 39). Those who thought jail most likely for themselves included a slightly higher proportion of heavier users than those who specified another alternative. Those who expected a fine were more likely to be medium level users than those in other outcome categories. The least frequent users were distributed quite evenly among the options. In all, very few respondents related the possibility of jail to themselves. In opposition to deterrence doctrine but in accordance with other studies (Waldo and Chiricos, 1972; Erickson et al., 1977; Meier and Johnson, 1977; Silberman, 1976), perceived severity of sentence is not an effective deterrent to cannabis use; attention is re-directed to extra-legal factors such as social judgment of the act and perceived health risks.

SUMMARY

This chapter has presented the costs and benefits experienced by the sample of cannabis offenders in the post-trial phase of social criminalization. One year after the court appearance, 90% of the original sample were interviewed, and non-response bias was found to be minimal.

TABLE 38

Frequency of Use and Perceived Severity of Law

Frequency of Use One Year Later*	Belief as to Maximum Penalty in Law for Possession	
	Non-Jail %	Jail %
Low	24	7
Medium	20	26
High	56	67
Total (N)**	(41)	(42)

*Low = never/once a month or less

Medium = up to once a week

High = twice a week or more

**Excludes two "don't know" responses

TABLE 39

Frequency of Use and Perceived Severity for Self

Frequency of Use One Year Later*	Belief as to Most Likely Sentence He/She Would Receive for Next Possession Offense			
	Discharge %	Fine %	Probation %	Jail %
Low	14	19	18	12
Medium	18	31	18	13
High	68	50	64	75
Total (N)**	(22)	(42)	(11)	(8)

*Low = never/once a month or less

Medium = up to once a week

High = twice a week or more

**Excludes two "don't know" responses

To review the findings, 26% had been charged with a criminal offense in the past year, and 15% had been found guilty. A greater proportion of the sample members considered themselves "criminal" than at the first interview (20% compared to 6%), and this was related to subsequent involvement in criminal activities and negative parental perceptions. Of mothers and fathers who had learned about the cannabis charge in the post-court year, about 60% had been told by the subject and the rest had learned in some other way. Thus secrecy had not been achieved by all sample members. Respondents were, objectively considered, worse off one year later, with almost twice the proportion neither working nor in school. Job changes and periods of unemployment were common. None of the costs noted thus far — criminal identification by self or parents, negative reaction of parents, or economic deprivation — was shown to be related to the nature of the sentence received for the cannabis offense.

Considering the more subjective reactions of the subjects, concern was expressed for the effect of a criminal record on employment, particularly by those convicted. The large majority preferred not to reveal a record to employers. While respect for the law in general, and *disrespect* for the marijuana prohibition, remained high, some disrespect had emerged for the courts. Conditional discharge and fine sentences were more likely to be perceived as inconsistent and unfair than one year earlier. Loss of respect for the police, as a result of the arrest incident, had abated somewhat, except for those who had experienced additional contacts with them. While only 4% of the sample reported "often" dwelling on their court experience, difficulties in complying with the terms of their sentence of probation or fine were reported by some. No conditional discharge had been revoked and a conviction substituted, but one individual had gone to jail for non-payment of his fine.

Deterrent effects were found to be very similar to those recorded at the first interview. While 8% reported no cannabis use in the past year, and 8% used it once a month or less, for the balance the relatively moderate or high levels of regular usage persisted. Intention to continue also remained high. The sample's legal knowledge was generally inaccurate, with a pronounced tendency to underestimate penalties available in law and to assume that Bill S-19 had become law. Heavier users had more accurate knowledge of penalties, but very few (9% of the total) expected the most severe outcome of jail for themselves on any subsequent possession charge; about half expected a fine. Awareness of the pardon provision and its applicability to their situation was almost non-existent among respondents. Since those few whose use had ceased tended also to be the least frequent users one year earlier, specific deterrent benefits remained "low." Some costs, however, have been documented.

Notes

CHAPTER 6: Social Criminalization

- 1 The official record source was also used to ascertain the subsequent criminal justice involvement of the 10 subjects who were not re-interviewed in the follow-up. It was found that five of them had no charges, one had been charged with a food and lodgings fraud in another province, one with drunkenness, two with possession of cannabis, and a warrant was outstanding on one subject for conspiracy to import narcotics. There were no multiple charges. Thus this group of non-respondents may be seen as quite similar in criminality in that half had stayed completely out of trouble compared to 63% of the final sample of respondents.
- 2 The 12 subjects with drug offenses included eight who were charged with possession of cannabis, two of them on more than one occasion. The other four had charges involving cultivation or trafficking of cannabis. None had charges related to any other illicit drug.
The charges in the “predatory” category, reported by 11 subjects, included mainly theft under \$200, possession of stolen property under \$200, and common assault. A number of more serious charges — break and enter, robbery, assault causing bodily harm — was attributed to three subjects in this group.
- 3 See Chapter 3, footnote 1. The official record check showed five subjects with federal driving convictions (involving alcohol) and 11 with drinking convictions under provincial statutes (mainly underage drinking) at the time of the first interview. Between the first and the second interviews, three subjects were charged with driving offenses, seven with breaches of provincial liquor laws, and two with causing a disturbance.
- 4 Three independent measures of criminality prior to the cannabis possession court appearance were constructed and related to subsequent criminality in the post-trial year. The first of these, based on the respondent’s self-report, contrasted those who reported *any* justice system involvement for criminal offenses (i.e. discharges, arrests, acquittals, charges pending or dismissed) with those who did not. The other two measures of prior criminality were based on the official record check. One divided those who had prior convictions or discharges for criminal offenses from those who did not, and the other separated those with convictions, discharges, plus any other form of contact (arrests etc.) from those

who did not. Interestingly, the self-report measure showed a stronger positive association with subsequent charges and findings than did the official record measures.

- 5 Comparable Ontario unemployment figures for the age 15-24 group, both males and females, were 7.7% in 1974 and 11.0% in 1975, so unemployment among the young generally had increased during the interval between the two interviews.
- 6 Not surprisingly, number of jobs and length of unemployment were negatively correlated with age and education and positively correlated with past and subsequent criminality, but further analysis of these inter-relationships is required. This, however, is a different exercise than presenting the costs associated with criminalization and will not be developed here.
- 7 Since 62% reported such contacts with police before their cannabis arrest (see Chapter 4), the figure of 80% being stopped in the post-court year suggests the possibility of increased enforcement activity by police against those with known records.
- 8 When subjects who intended to continue use were asked at the first interview whether they would use "more," "less," or the "same" as in the past year, about one-third forecast a decline in their frequency, with nearly all of the remainder projecting unchanged use.
- 9 This definition of selling is somewhat more restricted than that used by Johnson (1973). He found that, in his sample of college students, 22% had ever sold cannabis, 13% had ever sold a "hard" drug, and 6% had sold three or more hard drugs as well as cannabis. Goode (1970) reported that 44% of his sample of marijuana users had ever sold a drug.
- 10 See Langer (1977) and Sorfleet (1976) for detailed accounts of the dealer's world.
- 11 Perhaps this underestimation of available penalties reflects another kind of "pluralistic ignorance" (see Brown et al., 1972) which serves to reduce the normative conflict generated by widespread breaking of marijuana laws.
- 12 Common responses to a question asking subjects whether they intended to apply for a pardon were these: "Never heard of it," "I don't need one — I got off," "I've got nothing to be pardoned for," "I don't have a record." Even when the pardon was explained at the completion of the final interview, most respondents said they would not seek one because they perceived the procedure as intrusive and offering few clear advantages to themselves.



Implications

FOR THE USER

The effects of punishment on the cannabis user who gets caught — the offender — were examined in personal, social, and economic terms. Costs incurred up to the time of court appearance and sentence were distinguished, whenever possible, from those which emerged in the subsequent year. Benefits pertaining to the user in the form of specific deterrent effects were also considered in both the initial contact with the sample of 95 offenders and the follow-up with 85 of them. Throughout the analysis, costs and benefits have been defined in the criminal justice context as the negative and positive effects associated with criminalization. That is, what are the harmful consequences attached to the acquisition of an official "criminal" status and what are the beneficial results in terms of dissuasion from the prohibited activity?

Briefly, the personal consequences of thinking of oneself as a criminal, after being labeled as such, were acknowledged by 6% of the sample immediately after court. Then, most offenders rejected this label for themselves, and viewed a majority of significant others, especially peers, as sharing this non-criminal perception of them. A year later, 20% of the sample considered themselves criminal, and the shift in self-identification was associated with further law-breaking activities of a criminal nature during the interim and with parental sharing of this definition. While the first official labeling of a cannabis offender rarely resulted in a criminal sense of identity, additional charges and convictions appeared to have a cumulative impact. The somewhat increased criminality of the respondents by the time of follow-up was indicated by the types of offenses committed and the more severe dispositions awarded. But this was not related to the nature of the sentence received for the earlier cannabis possession offense. The official intervention at that time may have contributed to the acquisition of attitudes conducive to other, more serious, violations of the law by some subjects, and thus may have contributed to the increased criminal involvement but, lacking a comparison group of similar but unlabeled cannabis users, the possibility that such activity would have occurred anyway cannot be discounted.

labelling
theory

Since most of the sample members were young (average age

21) and still in contact with their parents, negative effects on social relationships were most likely to emerge with reference to their families. A fairly tolerant, if not approving, attitude to marijuana use was said by a majority of respondents to be held by their parents, though a minority reported strong disapproval. The wish to keep the charge a secret or at least to choose the circumstances of the revelation, however, was shared by a large number of the offenders. They seemed to have had some degree of success in controlling the disclosure of the information about their court case. This was indicated at the one year follow-up when nearly 60% of parents knew about the charge, and most had been told by the subjects themselves. The greatest disruption in social relationships occurred when the revelation was unplanned and unexpected. While this occurred relatively infrequently, such adverse reactions were described as upsetting for all parties involved. For the minority of sample members who were older and in their own residences, the objects of concern in concealing their charge were more likely to be social or work associates, and again they seemed quite successful in doing so.

The economic consequences were documented as those relating to employment situations or prospects. Direct financial losses at the time of sentence affected three-quarters of the subjects and averaged about \$70. More job casualties were associated with the pre-trial period, when five subjects lost jobs for a reason related to the charge. At the time of follow-up no further losses were directly traceable to the existence of a criminal record. A few subjects thought it might have negatively affected their applications for new positions, but this could not be verified. However, in objective terms the sample's economic position as a group had declined in the post-trial year, with nearly twice the proportion neither working nor in school (21% compared to 11% at the time of sentence). Change in position, number of jobs held, and length of unemployment in the one-year interval were not related to the nature of the sentence awarded for the cannabis offense, so that those who received absolute discharges were no better (or worse) off economically than those fined or placed on probation. Those who did not receive an absolute discharge did perceive more severe sentences as a greater handicap. This was evidenced by their stronger preference that employers not learn of their legal history. Some support for this subjective evaluation was provided by a field experiment which showed that favorable responses from potential employers were less likely for someone convicted than someone discharged (Erickson and Goodstadt, 1979). Although a one year follow-up can reflect only the initial economic consequences of a criminal record, anxiety over its effects appeared to outstrip the demonstrable deprivations over this period. Leon has observed:

One of the most powerful consequences of a conviction or a discharge may be grounded in a 'fear of

the unknown.' That is, the individual is placed in a vulnerable position, possibly not knowing whether, or when, additional sanctions will be applied.
(1979:345)

The subjects' reactions were consistent with this view.

It was suggested earlier (Chapter 3) that, whatever the valuation placed on these costs of criminalization, they reflected a minimal set of consequences, due in part to the relatively lenient sentencing practices of Toronto judges. This argument will be further developed with reference to the court setting, the characteristics of offenders, and the changing social definition of the crime.

First, disclosure is a requisite for many of the personal, social, and economic consequences. The Toronto setting provided an anonymous courtroom in a central, large courthouse where the only spectators were likely to be fellow cannabis offenders. The daily papers seldom reported simple possession charges. Thus it was possible, to an extent unlikely in a smaller centre, for offenders to protect the secrecy of the event if they so wished, or to divulge it in a manner of their own choosing. (The interview data clearly show that to many of the respondents, the confidentiality of the court appearance was very important. Successful secrecy appeared to be one factor in minimizing the consequences which they experienced.)

Secondly, many of the offenders were economically disadvantaged to start with, by virtue of their youth, incomplete schooling, and lack of skills. Very few occupied professional careers or were en route to university. Their jobs tended to be those with a high turnover and required fewer skills. The possible existence of a criminal record was not routinely raised by their employers. (That is not to say such respondents were not concerned about the effects of their records on employment opportunities — many expressed such anxiety — but rather that their criminal records were just one more handicap among several in a time of rising unemployment among young people.) To have isolated it as the only liability was just not realistic for many of the subjects.)

(Thirdly, in the past decade moderate cannabis use has moved from highly deviant to merely "disreputable" behavior (Hagan, 1977:66), and for many youthful persons, cannabis use is acceptable and "normal" (Johnston, 1980; Smart et al., 1979). The majority of the respondents in this study were long-term, experienced users. They stated that they did not consider their cannabis use or themselves to be criminal and they perceived peer support for this view. They seemed to be attempting, often successfully, to replace the label "criminal" with the less pejorative term "cannabis user.") To a lesser extent, they were also able to draw on examples of parental and employer accep-

tance of, or even participation in, this drug use activity in support of their redefinition of the court experience. Thus, it seems reasonable to suggest that cannabis offenders have become, on the whole, better able to cope with the possible adverse effects of criminalization than were their counterparts a few years earlier when the Canadian and American national commissions on drug use were preparing their reports.

The assessment of "high" and "low" costs is a matter of value judgment, and ultimately one for policy decision-makers to resolve. Costs must also be balanced against the weight of benefits. A review of recent literature showed very little evidence in support of the general deterrence of cannabis use by the policy of prohibition. In this study, specific deterrent effects, those displayed by criminally sanctioned users, were found to be minimal. After one year, 8% of the respondents reported no use of cannabis: almost all of them were the least frequent users of cannabis before their court appearance. While heavy consumption had declined somewhat among users, the reasons given related more to lifestyle changes rather than to the legal threat. Neither actual nor perceived severity of penalty was shown to be related to continuation or intensity of cannabis use. Although most users reported a number of precautions taken in an effort to avoid detection by the police, in the one-year interval 9% had been charged again with cannabis possession.

The adverse individual consequences of the application of criminal sanctions to cannabis users have been, at times, imprecisely stated and variously evaluated. This study has demonstrated that they do occur, and with a broad range of impact. Popular notions have not been sustained that those who escape incarceration, or even conviction, escape punishment. When compared to the negligible specific deterrent effects on these offenders, and the interests of general deterrence that such punishment is intended to serve, the balance of the equation may indeed be close to the "benefit-less costs" suggested at the Senate hearings of Bill S-19 by the Chairman of the Law Reform Commission of Canada.

FOR THE LAW

Proponents of the "overcriminalization" perspective have persuasively argued that the extension of the criminal sanction to activities which do no harm to the person or property of others, and which lack societal consensus on their wrongness, impose a burden on the overall role and tradition of the law (Law Reform Commission, 1976; Packer, 1968). Negative repercussions which may result include the overloading of the courts with concomitant pressure for legal shortcuts and disrespect for the law and legal institutions. The cannabis prohibition, which is widely broken and unevenly enforced,

was the basis for one in every eight federal criminal charges laid in Canada in 1976. It provides a paradigm for illustration of the possible effects of this overburdening of the law.)

The volume of cannabis possession cases (about 5,000 in Toronto in 1974) adds considerably to the court's load. The docket of one courtroom each day was devoted almost entirely to these cases. Features observed which expedited proceedings included a rapid turnover of cases, the routine waiving of the certificate of analysis (proof that the substance was cannabis), the predominance of guilty pleas, and usually the lack of legal representation. (These common practices are out of keeping with the ideals of the administration of justice.)

over load
leads to
short-cuts

The development of disrespect was assessed by three possible manifestations: first, for the law in general; secondly, for the specific offense related to cannabis use; thirdly, for the operation of the criminal justice system. At both interviews, the subjects expressed conventional sentiments accepting the need for the law generally, and also exhibited quite conforming views about the relative seriousness of various crimes and appropriate penalties for their perpetrators. But nearly all the respondents disputed the legitimacy of the cannabis prohibition, both at the time of sentence and follow-up. The enforcement of the law produced negative attitudes towards the police in some of the subjects, particularly in response to aggressive or violent police practices during the arrest incident. Disrespect for the courts was displayed, which was based on perceived inconsistency and unfairness of sentencing. This was especially so in relation to the discrepancies between the awarding of absolute discharges and the other options. This perception was not at odds with the reality of sentencing in that penalties did not bear a consistent relationship to either the details of the offense or the character of the accused, but sentence was affected by the presiding judge and by whether a lawyer spoke on behalf of the accused.

The discharge provision was originally introduced, in 1972, with the formal legislative objective of reducing the individual costs of conviction while retaining criminal penalties. In this study, personal, social, and economic consequences did not differ according to whether absolute discharge, conditional discharge, or a fine was imposed on offenders. Nor were specific deterrent effects related to the type of sentence received. However, this additional and unevenly exercised sentencing alternative of absolute discharge may have contributed to an even greater sense of injustice and disrespect for the courts among offenders, particularly among those who received more severe sentences. Thus, the guidance that might be offered from these results for the ongoing debate on penalty changes is that all cannabis possession offenders should receive the least costly absolute discharge option. There are no appreciable gains in deterrent effectiveness from

Conclus¹

applying the sanctions of fine or probation. As well, conditional discharge involves additional public expenditure for probation services. And some loss of respect for the law in relation to court practices of inconsistent sentencing does occur.

While the federal government may have given tacit support to a more lenient sentencing policy of discharges for possession (by introducing the discharge provision in conjunction with guidelines to federal drug prosecutors not to oppose discharge), judges nationally still award it in a minority of cases. Judges have voiced opposition to limitation of their discretion by mandatory sentences and, indeed, to expand sentencing options and then restrict judges' freedom to exercise them does seem contradictory. The ramifications of an obligatory discharge for possession offenders extend beyond the cannabis issue to the realm of sentencing philosophy and law reform generally.

Similar reservations can be expressed about the proposal that pardons be automatically given to cannabis possession offenders (such as in revised Bill S-19) in order to soften the harmful effects of a criminal record. The Chairman of the federal Law Reform Commission offered this comment at the Senate hearings on cannabis:

Parliament can do that of course, but . . . why did the machinery bring the person through the whole criminal justice system into a position where he was convicted, in the first place, when there are many other methods of coping with and dealing with the situation?

(Senate, 1975)

Further, such a policy seems to contradict the fundamental meaning of a pardon, that of clemency, and may devalue its worth for the truly rehabilitated criminal who seeks to regain his or her legitimate status in the society. As this study has shown, most cannabis offenders are unlikely to be repentant about their drug use. To award pardons automatically to all such offenders would seem to be more in the form of amnesty rather than a unique expression of mercy to the individual wrongdoer.

Attempts to reduce the consequences of a criminal record and achieve fairness in sentencing, through modification of existing laws, are subject to various limitations and contradictions. The overcriminalization perspective directs attention to a reconsideration of the proper scope of the criminal law, suggests that the criminal sanction should be applied less rather than more, and proposes that alternative means of dealing with problems be developed. The legal costs shown in this study indicate that cannabis control might benefit from such a re-evaluation. Hagan summarizes this point of view:

This does not mean that we condone marijuana... abuse, it simply means that the criminal justice system is not the place to demonstrate our sentiments of condemnation.

(1977:198)

FOR SOCIETY

Widespread use of cannabis in the face of criminal prohibition has posed complex problems for western countries, Canada among them. Society has yet to strike a balance between the adverse consequences of the use itself and the costs resulting from the control policy. While this study has focused on one aspect of costs — the effects of criminal sanction on users — policymakers must consider other costs of prohibition as well. Some of these, elaborated on elsewhere, include the creation of an illicit market with large profits for organized crime (Le Dain, 1972; Glaser, 1978), the abrogation of civil liberties through special police powers and aggressive enforcement tactics (Solomon, 1980; Manning and Redlinger, 1978), and the economic costs of the resources required to process thousands of offenders through the criminal justice system (Bryan, 1979; Single, 1980).

Costs
of
law

This study has provided hitherto unavailable evidence on the costs and benefits related to punishing individual users. The overall amount of criminalization for cannabis use in Canada was assessed in both the official sense of the numbers acquiring records as well as variation in the social aftermath. Meagre support was demonstrated for assigning distinct gradations in social effects to the alternative sanctions of absolute discharge, conditional discharge, and fine. Most adverse consequences were associated primarily with the fact of criminalization — from arrest through to court appearance and imposition of a criminal label. Although no subjects were imprisoned, it seems likely that the distinction between custodial and non-custodial outcomes is more decisive in any immediate or short-term impact on offenders' lives than variation in non-custodial alternatives.

Reducing sentencing severity in law by replacing conviction with discharge seemed to have little demonstrable effect in the one year follow-up period. Since the number of persons subjected to official intervention for cannabis possession has continued to grow, the overall amount of criminalization has been increasing without effective mitigation by more lenient sentencing. In terms of the model of criminalization presented in Chapter 2, the impact of official criminalization appears more significant than the social criminalization related to sentence in determining the consequences of criminal labeling. It would follow that a much greater impact on total

criminalization would be achieved through a reduction in the numbers being arrested for this crime.

A major concern is that adverse health effects of cannabis use would be significantly, though indirectly, magnified by the reduction or removal of criminal penalties. This result would be demonstrated only if use levels were substantially altered upwards by law reform. Certainly evidence has been mounting that the use of marijuana and hashish, particularly since it has become available in more potent forms, poses hazards to health (NIDA, 1980). While those potentially at risk because of heavy, chronic use or membership in a vulnerable group, represent a minority of all users (e.g. approximately 10% of those aged 18-29 report use of cannabis more than once a week; Rootman, 1979), the widespread nature of use makes it probable that long-term, large-scale studies on humans eventually will show, with greater specificity, the extent of likely health problems in the population of users (Fehr et al., 1980).

Continued reliance on the criminal law as a public health measure has not stopped the dimensions of the potential problem from expanding. It is important to recall that the present criminal prohibitionist policy was not designed to protect the health of Canadians from the demonstrated harm of marijuana use, but was rather inherited as an historical accident that linked cannabis with the opiates during the 1920s. But perhaps even more now than when the Le Dain Commission made the comment (1972:291), decision makers cannot start *de novo* to design the best cannabis policy, but must deal with the current situation at the start of the 1980s.

A realistic approach might be to accept that some health costs of excessive or inappropriate use are inevitable (unless the trend of the last decade is dramatically reversed) and to question whether these should be compounded by the continued costs of criminalization. Prohibition has been a high cost, low benefit policy for controlling the demand for cannabis. A related issue is the degree of tolerance of diversity in lifestyles and recreational pursuits that a society should embody in its criminal law. Cannabis use in Canada, as in the United States, has been occurring on a scale that implies an ever-increasing level of social acceptance, especially among the young. The assertion that criminal prohibition can be justified because it discourages a sufficiently high amount of use in the population at large has been called into question by steady growth in use and by recent studies of general deterrence. The failure of cannabis prohibition has been attributed to a combination of the low actual risk of detection, the perception that certainty of punishment is remote, and the low or absent social condemnation of the behavior (Erickson et al., 1977; Meier and Johnson, 1977; Silberman, 1976). Concern about harmful health effects, peer disapproval, and judgments about the "wrongness" of the activity have been shown to far outweigh legal threats in

preventing use. Users are not oblivious to the physical and mental hazards of various forms of drug-taking. However, they assess the health risks of cannabis as relatively low (Johnston, 1980; Erickson, 1981). Thus, it is suggested, a concern with adverse health effects does not provide a justification for retention of the status quo, but instead requires a consideration of alternate measures that recognize the public health implications of widespread cannabis use. Such a redefinition would open the door for the development of various strategies to minimize harmful use in place of the moral condemnation and legal stigma inherent in the criminal process.

• • •

emphasize health over legal

For the users, then, the implications of the cannabis prohibition are that they are in a situation of double jeopardy: they are at risk both from the possible adverse physical effects of drug-taking and from the harmful individual consequences of criminalization. For the more than 200,000 Canadians so far who have received criminal records of discharge or conviction for cannabis possession, the label is a reality to be coped with. For the as yet undetected users, criminalization presents a potential hazard.

For the law, in the context of the ongoing debate over reducing penalties for simple possession, the absolute discharge is preferable to the fine or probation alternatives — it does not substantially reduce costs to the individual but neither does it increase the likelihood of continued offending. If a minimal benefit is being attained through the sanction, it is more rational to apply the least costly form of it. Society has yet to come to terms with the increasing and widespread use of a criminally prohibited drug.

Far-reaching debates will no doubt continue in the public and legislative forums until, and even after, a new cannabis policy has been implemented. In Canada, the point at which the present law is considered adequate has been passed. Policymakers are now deliberating the next step to take. The purpose of this study was to provide systematically derived data on the adverse individual costs and specific deterrent benefits associated with criminalization. The offenders' perceptions of their experiences of becoming "cannabis criminals" have been presented to add substance to the statistical information. It is hoped that the effects of punishment on the aggregate of criminalized users will be one of the crucial components considered in shaping future policy in this area.

purpose of study

APPENDICES

- A. Cannabis Offenses in Metropolitan Toronto, 1973-76
- B. Non-Response Bias in Follow-up Sample
- C. Case Histories

A

Appendix A — Cannabis Offenses in Metropolitan Toronto, 1973-76

TABLE A.1
Cannabis Offenses by Year
Metro Toronto

Offenses	1973		1974		1975		1976	
	No.	%	No.	%	No.	%	No.	%
Possession	5652	91.5	4949	90.4	3672	86.6	4083	87.7
Trafficking	522	8.5	513	9.4	566	13.3	572	12.3
Importing	2	0.0	0	—	0	—	0	—
Cultivating	1	0.0	13	0.2	1	0.0	0	—
TOTAL	6177	100.0	5475	100.0	4239	99.9	4955	100.0

Source: Metro Toronto Police

TABLE A.2
Cannabis Possession Offenses by Month and Year
Metro Toronto

Month	1973		1974		1975		1976	
	No.	%	No.	%	No.	%	No.	%
January	362	6.4	470	9.5	300	8.2	275	6.7
Feburary	548	9.7	396	8.0	209	5.7	279	6.8
March	428	7.5	497	10.0	250	6.8	309	7.5
April	516	9.1	473	9.6	298	8.1	327	8.0
May	453	8.0	528	10.7	285	7.8	409	10.0
June	398	7.0	449	9.1	330	9.0	398	9.7
July	417	7.3	347	7.0	325	8.8	399	9.8
August	545	9.6	402	8.1	358	9.7	372	9.1
September	543	9.6	453	9.1	294	8.0	334	8.2
October	465	8.2	307	6.2	341	9.3	354	8.8
November	477	8.4	314	6.3	415	11.3	395	9.6
December	518	9.1	313	6.3	267	7.3	232	5.7
TOTAL	5652	100.1	4949	99.9	3672	100.0	4083	99.9

Source: Metro Toronto Police

TABLE A.3
Cannabis Possession Offense by Sex and Year
Metro Toronto

Sex	1973		1974		1975		1976	
	No.	%	No.	%	No.	%	No.	%
Male	4867	86.1	4314	87.2	3185	86.7	3525	86.3
Female	785	13.9	635	12.8	487	13.3	558	13.7
TOTAL	5652	100.0	4949	100.0	3672	100.0	4083	100.0

Source: Metro Toronto Police

TABLE A.4
Cannabis Possession Offenses by Age and Year
Metro Toronto

Age	1973		1974		1975		1976	
	No.	%	No.	%	No.	%	No.	%
15 or less*	179	3.2	168	3.4	91	2.5	144	3.5
16-17	1084	19.2	972	19.6	667	18.2	796	19.5
18-19	1575	27.9	1321	26.7	973	26.5	1024	25.1
20-21	1120	19.8	969	19.6	692	18.9	768	18.8
22-23	723	12.8	552	11.1	468	12.7	490	12.0
24-25	406	7.2	368	7.4	297	8.1	324	7.9
26-27	239	4.2	234	4.7	185	5.0	196	4.8
28-29	110	1.9	108	2.2	119	3.2	155	3.8
30 or more	216	3.8	257	5.2	180	4.9	184	4.5
Unknown							2	.1
TOTAL	5652	100.0	4949	99.9	3672	100.0	4083	100.0

*Juveniles

Source: Metro Toronto Police

B

Appendix B — Non-Response Bias in Follow-up Sample

TABLE B.1
Final Follow-up Status by Age

Status	Age (years)		
	16-18 %	19-21 %	22+ %
No final interview	3.3	6.2	21.2
Final interview completed	96.6	93.8	78.8
Total (N)	(30)	(32)	(33)

TABLE B.2
Final Follow-up Status by Initial Living Situation

Status	Initial Living Situation			
	With Parents %	With Mate/Spouse %	Shared %	Alone %
No final interview	2.4	18.8	9.6	23.5
Final interview completed	97.6	81.3	90.4	76.4
Total (N)	(41)	(16)	(21)	(17)

TABLE B.3

Final Follow-up Status by Position

Status	Initial Position		
	School %	Employed %	Other %
No final interview	0	10	27
Final interview completed	100	90	73
Total (N)	(16)	(68)	(11)

TABLE B.4

Final Follow-up Status by Sentence

Status	Sentence		
	Absolute Discharge %	Conditional Discharge %	Fine %
No final interview	15	3	13
Final interview completed	85	97	87
Total (N)	(40)	(32)	(23)

TABLE B.5

Final Follow-up Status by Frequency of Use

Status	Initial Frequency of Use	
	Moderate-Regular/Irregular %	Heavy-Regular %
No final interview	8	12
Final interview	92	88
Total (N)	(26)	(69)

C

Appendix C — Case Histories

Two case histories have been selected for presentation in greater detail. Rather than being typical of the cannabis offenders interviewed, they illustrate sharply contrasting personal reactions to the experience of being made a cannabis criminal. Adolescent users have been identified as a group at particular risk because of potential adverse consequences arising both from health effects and criminalization. "Daniel" and "Robert," as I have named them, were both 16 when arrested — barely adults in terms of the criminal justice system. Both came from similar home backgrounds, had never been in trouble before the marijuana arrest, received the same sentence, and were not charged with any new offenses in the year following their court appearances. However, one was affected by the experience much more than the other.

"Daniel"

Daniel was a high school student with a summer job who lived at home with both parents. His first experience with smoking marijuana occurred earlier on the same day he was arrested. He received a conditional discharge with a probation requirement. Some of his friends had tried cannabis but none was "into it heavy" and none had ever been arrested. Daniel reported no experience whatsoever with any other illicit drugs, nor any desire to try them. He described his parents as "stunned" to learn of his arrest, and Daniel considered telling them he had to go to court as the worst part of the whole experience. He thought of himself as a criminal and remarked, "I just feel guilty about it." He also believed that his parents, and his friends too in a way, regarded him as a criminal, as did his boss, the judge, and the police. In a telephone contact four months after he was sentenced, Daniel said he still thought about what had happened "most of the time."

One year later he had not used marijuana since the day he was caught. His opinion was that marijuana should be illegal and that it was "a dangerous drug" with few or any good effects. He considered it about as dangerous as alcohol. Daniel acknowledged continuing to think of himself as a criminal in the post-trial year, but that, "Now I'm off probation and can write for a pardon. I feel differently about it." On the anniversary of his arrest, he and his friends

stayed at home, didn't go anywhere, and talked about it for the only time in several months.

He had gone once a month to see the probation officer and did not miss any appointments, "Even one day in a blizzard when I nearly froze." While continuing at school he had again had a summer job, in part so that he would "be around and my parents would know where I was." They didn't mention his arrest and court experience, but he still sensed their disapproval at times. He expected employers to be prejudiced against someone with a record and hoped that getting a pardon would help.

"Robert"

Robert had first tried marijuana at age 14 and reported using it almost daily in the year before his arrest. He was employed and lived at home with both parents. His sentence was a conditional discharge with a probation requirement. He described all his friends as regular cannabis users, three with criminal records for cannabis. In the past, he had experimented with other drugs but "not any more" and would not try injecting any drug. His parents knew of his arrest and his mother accompanied him to court. Robert did not think of himself as a criminal at all and, in his view, neither did his parents or his friends. His boss "might" and the judge and police "definitely" did regard him that way, he thought. He felt that the worst thing about the whole experience was getting probation with the attendant restrictions. His feelings about the experience four months later were that "it's over and done with."

One year after court Robert was still using cannabis on a near daily basis. He emphasized that he never used it while working, only in his leisure time. His attitude to the cannabis prohibition was one of strong disagreement. He thought that cannabis was much less dangerous than alcohol, but that not enough was known yet to judge its health effects. "If I find something wrong with it I'll put a stop to it, but I don't find anything wrong with it [now]." Robert said he never thought about his court experience and he didn't consider himself a criminal nor did his parents or his friends. He described his parents' attitude to marijuana as "'don't smoke it in the house — keep it out.' I guess they'd rather I didn't but they can't say 'don't do it.'"

Robert's attitude to probation was to attempt to ignore it as much as was possible. He had gone a few times, missed several appointments, went once in response to a call from the probation officer, then missed several more. Robert was still working with the same company, but had been promoted to a different position. He had been saving money and was planning an extended trip abroad. In the year since his trial he had been very cautious about cannabis use and had succeeded in avoiding further arrests. He intended to apply for a pardon, but didn't think a record for only cannabis possession would be all that important to most employers.

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Author Index

- Ageton, S.S., 11, 70, 98, 159
Albright, P., 39, 159
Allen, F.A., 11, 159
Andenaes, J., 78, 86, 87, 88, 89, 129, 159
Anderson, L.S., 89, 90, 159
Anthony, B., 18, 159
Arras, D., 164
- Ball, J.C., 51, 159
Becker, H., 10, 32, 39, 70, 98, 159
Black, D., 33, 55, 99, 159
Blackwell, J., 6, 88, 159
Blum, R., 62, 159
Bogomolny, R., 53, 58, 164
Boydell, C.L., 72, 82, 160, 163
Brickey, S.L., 168
Brown, J.W., 72, 131, 136, 159
Bryan, C.M., 2, 6, 19, 66, 145, 160
Buffalo, M.D., 72, 98, 167
- Cassidy, C.H., 163
Chiricos, T.G., 88, 89, 90, 129, 132, 159, 169
Cicourel, A., 32, 160
Claster, D., 88, 160
Cook, S., 2, 17, 23, 24, 42, 59, 160, 162, 168
Crow, I., 49, 160
- Damaska, M.R., 49, 82, 98, 160
de Fleur, L.B., 62, 160
Dent, M., 39, 159
Dinitz, S., 162
- Elliot, D.S., 11, 70, 98, 159
Erickson, M.L., 88, 93, 132, 146, 161
Erickson, P.G., 39, 42, 50, 91, 109, 114, 115, 129, 140, 147, 161
Erikson, K.T., 32, 161
- Feeley, M., 63, 86, 161
Fehr, K., 6, 50, 146, 161, 164
Fejer, D., 2, 98, 168
Ford, R.E., 58, 162
Foster, J.D., 11, 70, 73, 98, 162
Fox, R.G., 32, 162
- Galliher, J.F., 33, 162
Garfinkel, H., 10, 32, 39, 98, 162
Geis, G., 144
Gibbs, J.P., 87, 88, 93, 129, 161, 162
Giffen, P.J., 11, 17, 33, 162
Giordano, P., 11, 162
Glaser, D., 5, 32, 58, 59, 145, 160, 162
Goode, E., 32, 37, 58, 120, 125, 136, 162, 163
Goodstadt, M.S., 98, 109, 114, 140, 161, 168
Green, M., 2, 17, 18, 159, 163, 169
Greenaway, W.K., 168
Grindstaff, C.F., 72, 82, 160, 163
Grupp, S.E., 39, 163
- Hagan, J., 10, 11, 30, 32, 50, 58, 70, 99, 141, 144, 163
Hawkins, J.D., 39, 163
Henshel, R.L., 131, 163
Hepburn, J.R., 11, 30, 70, 71, 73, 98, 163
Hogarth, J., 45, 46, 163
Hopkins, A., 9, 163
Hovious, B., 19, 164
- Jensen, G.F., 11, 70, 81, 88, 98, 129, 161, 164
Johnson, B.D., 58, 136, 164
Johnson, H.M., 163
Johnson, W.T., 49, 53, 58, 89, 90, 129, 132, 146, 164, 166
Johnston, L.D., 2, 50, 88, 125, 141, 146, 164
- Kadish, S.H., 11, 99, 164
Kalant, H., 161
Kalant, O.J., 6, 161, 164
Kandel, D., 125, 128, 168
Kitsuse, J.L., 32, 164
Klemke, L.W., 70, 98, 169
- Lambert, S., 17, 162
Langer, J., 136, 165
Lemert, E.M., 10, 32, 39, 165
Leon, J.S., 26, 27, 31, 34, 40, 42, 50, 68, 82, 98, 122, 140, 161, 163, 165, 169

- Liban, C.B., 168
 Light, N.B., 163
 Lindesmith, A.R., 33, 165
 Lofland, J., 98, 165
 Logan, C.H., 87, 169

 Manning, P.K., 58, 59, 62, 145, 165, 166
 Martin, J.P., 39, 166
 Matza, D., 32, 98, 166, 169
 McAllister, V.L., 11, 166
 McDonald, L., 33, 166
 Meier, R.F., 89, 90, 129, 132, 146, 166
 Miller, C.A., 163
 Morton, A.S., 49, 53, 58, 62, 166
 Murphy, E.F., 1, 159, 166

 Nettler, G.A., 10, 32, 166

 O'Brien, B.M., 32, 162
 Ohlgren, J., 166

 Packer, H.L., 11, 99, 142, 167
 Palys, T.S., 39, 109, 167
 Parsons, T., 99, 167
 Pearson, R.W., 166
 Perry, R.W., 45, 167
 Peterson, R.E., 164
 Pineo, P.C., 43, 108, 167
 Plant, M.A., 32, 37, 120, 167
 Porter, J., 43, 108, 167
 Prell, A.E., 82, 167

 Reckless, W.C., 162
 Redlinger, L.J., 58, 62, 145, 166
 Reiss, A.J. Jr., 55, 99, 159, 167
 Rogers, J.W., 72, 98, 167
 Rootman, I., 2, 98, 146, 167
 Rose, A.M., 82, 167
 Rowe, A.R., 87, 169
 Rubington, E., 9, 10, 166, 167

 Salutin, L.M., 39, 161
 Scheingold, S.S., 48, 167

 Schur, E., 32, 55, 167
 Schwartz, R.D., 30, 39, 69, 109, 168
 Sheppard, M.A., 168
 Skolnick, J.H., 30, 39, 55, 62, 69, 109, 168
 Siegal, L.J., 11, 30, 70, 98, 102, 168
 Silberman, M., 89, 90, 129, 132, 146, 168
 Single, E.W., 31, 88, 115, 125, 128, 145, 161, 168
 Small, S., 17, 162, 168
 Smart, R.G., 2, 98, 141, 168
 Solomon, R., 13, 17, 18, 29, 58, 63, 145, 159, 168, 169
 Sommerfeld, S.F., 27, 169
 Sorfleet, P., 136, 169
 Spector, M., 32, 164
 Swabey, T.R., 27, 40, 169
 Sykes, G.M., 98, 169

 Tannenbaum, F., 32, 169
 Teevan, J., 88, 90, 169
 Thorsell, B.A., 70, 98, 169
 Tinklenberg, J., 6, 169
 Tittle, C.R., 87, 169
 Trebach, A.S., 166

 Wachtel, D., 58, 162
 Waldo, G.P., 88, 89, 90, 129, 132, 159, 169
 Walker, A., 33, 162
 Waxer, E., 160
 Webb, S.D., 88, 89, 170
 Webster, D., 39, 166
 Weinberg, M.S., 9, 10, 166, 167
 Weisel, S., 166
 Wellford, C., 32, 170
 Wells, L.E., 164
 West, D., 49, 170
 Whealey, A.C., 23, 42, 170
 Wiles, P., 63, 170
 Wieder, D.L., 32, 170

 Zimmerman, D.H., 32, 170

Index

A

- Abortion
 - illegal, 72, 82
- Addiction, 18, 19
 - heroin, 19
- Addict, 18
- Adult(s), 2, 39, 40, 72, 88, 90
 - as marijuana users, 2
- Age, 40, 41, 43, 48, 64, 65, 90, 139
- Alcohol, 122, 125
- Amphetamine (speed), 17, 122, 125, 128
- Arrest(s), 2, 4, 23, 24, 26, 28, 30, 39, 53-59, 60-63, 69, 71, 74, 76, 78, 79, 82, 86, 87, 88, 90, 91, 95, 97, 117, 134, 143, 145
 - patterns, 53
 - practices, 55
 - probability of, 87, 88, 89, 90
 - quotas for, 58
 - re-, 91, 94, 95

Asians, 2, 18

- Availability
 - cannabis, *See under Cannabis*,
 - availability
 - drug, 23

B

- Barbiturates, 17
- Behavior, 9, 86, 87, 89, 92, 115, 129, 130, 146
 - delinquent, 70
 - deviant, 10, 141
 - illicit, 9-10, 20
 - indiscreet, 58
 - judicial, 23
 - law-abiding, 89
 - non-conforming, 72
 - police, 59-63
- Bias, 43, 45, 48, 132
- Bill S-19, 17, 28, 29, 129, 130, 134, 142, 144
- Britain, 18

C

- Canadian Police Information Centre (CPIC), 40, 117
- Cannabis, 74
 - availability, 4, 23, 26
 - buying, 124, 125, 128
 - consumption, 2, 9, 142
 - daily, 2
 - control, *See under Control*, cannabis "criminals," 5, 11, 17, 38, 53-66, 147
 - policy, *See under Policy*, cannabis prohibition, 9, 12, 13, 31, 63, 78, 82, 97, 115, 134, 142, 143, 146, 147, selling, 124, 125
 - use, 17, 19-20, 29, 30, 48-49, 58, 72, 74, 87, 90, 91, 97, 101, 106, 122, 125, 129, 131, 134, 141, 142, 145, 147
 - attitude towards, 106, 120, 140
 - effects of, 5, 145, 146
 - excessive, 3
 - extent of, 2, 48, 73, 122, 125, 131, 132
 - initiation, 91
 - as problem, 1
 - users, 1, 5, 37, 48, 49, 53, 55, 58, 61, 73, 86, 120, 124, 125, 128, 129, 139, 141, 147
 - heavy, 37, 48, 70, 128, 132, 134
 - occasional, 48
- Cannabis sativa*, 45
- Certificate of analysis, 45, 64, 77, 143
- Charge(s), 26, 28, 31, 40, 43, 44, 45, 53, 56, 57, 59, 64, 69, 70, 74, 75, 102, 103, 105-108, 143
 - cannabis, 75, 76, 101, 134, 139, 140
- Chinese, 17
 - immigrant, 15
- Civil liberties, 58, 145
- Cocaine, 1, 12, 17, 29, 122, 128
- Control, 4, 24, 89
 - cannabis, 26, 29, 30, 144
 - policy, 145, 146

- Conviction(s), 2, 5, 19, 23, 24, 26, 27, 28, 30, 31, 32, 40, 49, 56, 81, 91, 110, 114, 121, 134, 142, 145
 - criminal, 4, 105, 147
 - consequences of, 26, 139, 140
 - Cost(s), 4, 10, 11, 12, 69, 82, 86, 97, 101-128, 132, 134, 139, 142, 143, 145, 147
 - area, 5, 122
 - benefit, 5, 10, 12, 32, 132, 142, 145
 - economic, 11, 76, 134, 145
 - effectiveness principle, 4
 - health, 146
 - legal, 115, 144
 - social, 3, 5, 69, 74, 86, 134
 - Court, 13, 17, 19, 29, 42-43, 45, 53, 78, 79, 97, 121, 130, 134, 141, 142, 144
 - appearance, 63-65, 74, 75, 76, 84, 94, 97, 101, 102, 105, 106, 109, 112, 120, 124, 125, 129, 139, 140, 141, 142, 145
 - disrespect for, 81, 117, 130, 134, 143
 - proceedings, 41, 74
 - processing, 4
 - role of, 63
 - Crime(s), 11, 37-51, 72, 73, 81, 87, 89, 102, 143, 145, 146
 - drug, 23
 - rate, 30, 87
 - social definition of, 141
 - victimless, 55, 87
 - Criminal(s), 10, 30, 37-51, 69, 70, 72, 80, 97, 102, 105, 106, 139, 144
 - career, 102
 - history, 48, 109, 114
 - new, 2, 5, 63, 65
 - self-labeled, 70
 - self-perception, 103, 105, 109, 134, 139, 141
 - Criminal Code*, 11, 23, 27
 - Criminal justice system, 2, 4, 11, 24, 39, 42, 53, 69, 70, 78-81, 97, 101, 115-117, 143, 144, 145
 - Criminal record(s), 2, 4, 27, 30, 39, 40, 69, 85, 112, 134, 140, 141, 144, 147
 - definition of, 39
 - Criminal sanction(s), 2, 5, 9, 11, 19, 69, 142, 144, 145
 - adverse consequences of, 69, 142, 145
 - social consequences of, 9
 - Criminality, 101-102, 139
 - Criminalization, 5, 7, 10, 11, 29, 30-32, 38, 69-97, 114, 122, 128, 146
 - of cannabis offenders, 9, 10, 24
 - Criminalization (*cont.*)
 - definition of, 5
 - of drug users, 9
 - effects of, 5, 38, 42, 69, 101-135, 139, 141, 142
 - adverse, 5, 39, 145, 147
 - "official," 30, 31, 145
 - model of, 9, 30, 31, 32, 145
 - over -, 142, 144
 - reduction of, 30, 31
 - "social," 30, 31, 32, 69, 101-135, 145
 - Cultivation, 12, 13, 19, 23, 44
- D
- Dealer, 56, 60, 124
 - Debate
 - cannabis, 5, 12, 147
 - Defense counsel, 27, 43, 64
 - Delinquency, 39, 81
 - Delinquent, 70
 - Deterrence, 5, 12, 23, 86, 89, 90, 131
 - doctrine, 129, 132
 - general, 86, 87-91, 142, 146
 - specific, 86, 91-97, 147
 - Deterrent effects, 6, 87, 89, 90, 91, 93, 94, 97, 101, 129, 131-133, 134, 139, 142, 143, 147
 - Deviance, 9, 71
 - definition of, 10
 - Deviant, 10
 - role of, 70
 - status, 69
 - Discharge, 13, 26, 27, 28, 29, 40, 56, 121, 122, 129, 130, 140, 144, 145, 147
 - absolute, 13, 27, 31, 32, 42, 45, 49, 65, 79, 80, 82, 94, 102, 109, 110, 112, 114, 115, 116, 117, 140, 143, 145, 147
 - conditional, 13, 27, 31, 32, 42, 49, 65, 91, 92, 93, 102, 112, 115, 121, 122, 134, 143, 144, 145
 - record of, 45
 - "Dope fiend," 18
 - Drug(s), 55, 58
 - abuse, 19
 - buying and selling, 125
 - commerce, 1
 - consumption, 1
 - controlled, 17
 - demand, 2

Drug(s) (*cont.*)

- illicit, 18, 19, 29, 40, 55, 61, 125
 - charges, 2, 44, 102
 - laws concerning, 1, 29
 - marketing of, 122
 - use, 4, 125
- offenses, 11, 22-23
 - attitude towards, 42
- policy, 1, 19
- psychotropic, 26
- restricted, 17, 24
- schedule, 1, 17, 19, 23
- searches, 13
- use, 19, 122-128
 - non-medical, 19
 - recreational, 18
- user, 18, 37, 58
 - naive, 37

E

- Employment, 43, 64, 65, 109, 112, 114, 134, 140, 141
 - See also* Unemployment
- Enforcement, 11, 13, 19, 23, 29, 53, 55, 58, 62, 78, 143, 145
 - agency, 69
 - apparatus, 78
 - patterns, 26, 59
- Error, 4, 94

F

- Fine, 13, 23, 24, 26, 28, 29, 31, 32, 49, 75, 76, 79, 82, 84, 91, 92, 93, 94, 102, 110, 115, 117, 121, 122, 129, 132, 134, 143, 144, 145, 147
- Food and Drugs Act*, 17, 19, 24, 26, 28, 30, 129, 130

H

- Hallucinogens, 17, 19
- Hash (ish), 1, 2, 20, 24, 43, 44, 60, 62, 124, 146
- Hash oil, 62
- Health, 11, 90, 146, 147
 - cost, *See under* Cost(s), health
 - effects, 4, 146, 147
 - problems, 146
 - risk, *See under* Risk, health
- Heroin, 1, 3, 17, 72, 82, 120

I

- Immigrant status, 120
- Immigration, 18
- Importing, 12, 13, 17, 19, 23
- Imprisonment, 1, 2, 18, 23, 24, 26, 28, 31, 42, 90, 129, 130
- Incarceration, 20, 23, 31-32, 142
- Indictment, 24, 27
- INTERPOL, 23

J

- Jail, 13, 23, 29, 82, 111, 122, 129, 132, 134
- Judge(s), 23, 24, 26, 29, 31, 42, 43, 45, 46, 49, 64, 65, 72, 79, 80, 81, 82, 84, 97, 116, 120, 121, 141, 143, 144
- Juvenile Court, 39
- Juveniles, 70, 88, 91

L

- Labeling, 9-12, 30, 32, 48, 69, 70, 139
 - criminal, 86, 145
 - official, 78
 - self - , 70, 73, 96
- Label, 73, 139, 147
 - criminal, 10, 30, 39, 69, 70, 71, 72, 73, 101, 141, 145
 - "drug user," 75
 - self, 71
- Law, 9-12, 27, 29, 30, 31, 58, 69, 73, 78-82, 87, 89, 90, 91, 97, 115-120, 121, 129, 130, 132, 134, 142-145, 147
 - Canadian, 13, 20
 - criminal, 4, 5, 9, 11, 12, 19, 88, 144, 146
 - changes in, 24
 - disrespect for, 12, 78-82, 97, 115-120, 130, 134, 142, 143, 144
 - drug, 5, 12-30, 53
 - reform, 19
 - enforcement, 1, 9, 58, 62, 78, 143
 - response, 2
 - function of, 12, 142
 - narcotic drug, 1, 2, 9, 17, 63
 - reform, 144, 146
 - respect for, 119, 120, 134
- Law Reform Commission of Canada, 11, 142, 144

Le Dain Commission, 4, 5, 24, 26, 31, 46,
88, 146
Legal code, 78, 81
Legal representation, 45, 49, 143
Legislators, 2
LSD, 17, 24

M

Maclean's Magazine, 1
Manufacture, 17
Marijuana
as new menace, 1
selling of, 124
use, 10, 81, 89, 90, 140, 146
changes in, 88
increase in, 23
self-reported, 88, 89, 90
user, 15, 72, 90
occasional, 70
Medical profession, 18
Mexicans, 2
Minority
laws directed at, 2
Morality, 10
Morphine, 1, 17

N

National Commissions, 4
Narcotic Control Act, 12, 13, 17, 19, 20,
23, 24, 26, 28, 29, 31, 41, 62, 129,
130
Narcotic(s), 1, 3, 4, 12, 13, 17, 18, 24
use, 1
hazards of, 1

O

Offender, 27, 30, 41, 48, 53, 63, 74, 75,
82-86, 91, 92, 95, 101, 108, 114, 115,
117
adult, 70
attitudes towards, 60
attributes of, 43, 141
cannabis, 24, 29, 32, 38, 40, 41, 46, 55,
69, 70, 71, 72, 82, 87, 102, 130,
139, 141, 142, 143, 144
age of, 40
sex distribution of, 40
drug, 24, 27, 28

Offender (*cont.*)

first, 5, 26, 38-40, 41, 48, 82
juvenile, 70
marijuana, 17, 37
marital status of, 65
Offense(s), 18, 24, 26, 27, 28, 31, 40, 46,
74, 79, 81, 120, 143
criminal, 30, 38, 70, 101, 103, 134
criminality of, 72, 73
cannabis, 81, 101, 102, 105, 132, 134,
140, 143
drinking, 102, 103
driving, 101, 102, 103
first, 13, 24, 27
indictable, 20, 129
repeated, 13
types of, 12, 17, 19, 23, 29, 31, 41, 72,
82, 102, 103, 139
Opiates, 29, 122, 125, 128, 146
Opium, 1
Opium and Drug Act, 17
Opium and Narcotic Drug Act, 17

P

Pardon, 27, 28, 80, 130, 134, 144
Peer, 74, 89, 90, 139
support, 73, 141
Penalties, 12, 17, 18, 20, 23, 24, 26-28,
29, 30, 79, 80, 81, 82, 87, 88, 90, 91,
92, 120, 121, 122, 129, 130, 131, 132,
134, 142, 143, 146
reduction of, 26-28, 29, 30, 31, 147
Police, 13, 23, 24, 26, 28, 29, 53, 55, 56,
57, 58, 59, 60, 61, 62, 63, 64, 70, 71,
72, 73, 76, 77, 78, 79, 85, 97, 117,
121, 134, 142, 143
attitude towards, 60, 78, 79, 117,
143
powers, 13, 18, 23, 58, 59, 62, 145
Policy, 2, 9, 12, 18, 26, 27, 29, 30, 42, 86,
142, 144, 147
cannabis, 2, 4, 5, 19, 30, 86, 146, 147
prohibitionist, 3, 146
control *See under* Control, policy
social, 4, 69
Policy makers, 3, 5, 142, 145, 147
Possession, 2, 12, 13, 17, 18, 19, 20, 23,
24, 26, 27, 28, 29, 30, 31, 38, 40, 41,
42, 43, 44, 46, 48, 53, 59, 63, 64, 70,
72, 73, 74, 76, 81, 82, 90, 92, 97, 101,
102, 112, 114, 120, 121, 125, 129,

- Possession (*cont.*)
 130, 134, 139, 141, 142, 143, 144,
 145, 147
- Possession for trafficking, 12, 19, 23, 26,
 44, 70
- Prison, 23, 37,
- Probation, 13, 23, 27, 31, 65, 79, 82, 84,
 92, 93, 94, 110, 114, 115, 117, 121,
 122, 129, 134, 140, 144, 147
- Propaganda, 3
- Prosecutor, 20, 24, 27, 28, 144
 Crown, 19, 24, 42, 43, 44, 64
- Psychedelics, 122, 125, 128
- Public drunkenness, 72, 82, 120
- Punishment, 5, 23, 86, 87, 88, 89, 90, 91,
 97, 142, 146
 effects of, 5, 37, 38, 139, 147
- "Pusher," 62
- R
- R. v. Hauser*, 19
- Recidivism, 39
- Record, 42, 45, 82, 85, 86, 105, 109, 114,
 117, 120
 arrest, 81
 criminal, *See under* Criminal record(s)
 discharge, 45
 juvenile court, 39
 police, 37, 101, 108
 prior, 23, 38, 41
- Remands, 45
- Right(s), 58, 63, 112, 114
- Rights and Privileges, 82-86, 120
- Risk(s), 129, 147
 of detection, 124, 129, 146
 health, 3, 132, 146, 147
 safety, 3
 of rearrest, 91
- Royal Canadian Mounted Police
 (RCMP), 13, 18, 19, 23, 24, 26, 28,
 29
- S
- Sale, 17
- Sanction(s), 23, 31, 70, 78, 87, 91, 93,
 141, 144, 145
 criminal, *See under* Criminal
 sanction(s)
 formal, 90
 informal, 90
- Search, 13, 18, 23, 55, 61
 illegal, 13, 62
 and seizures, 18, 58
- Search warrant(s), *See under*
 Warrant(s)
- Sentence(s), 12, 13, 17, 23, 24, 27, 29, 30,
 32, 37, 38, 41, 42, 45, 46, 48, 49, 65,
 69-97, 101, 102, 108, 109, 112, 115,
 116, 117, 121, 122, 129, 130, 132,
 134, 139, 140, 143, 145
 prison, 1, 2, 28
 mandatory, 1, 144
 suspended, 23, 26, 28, 31, 42, 102
- Sentencing, 12, 24, 27, 31, 32, 38, 42, 43,
 69, 78, 101, 143, 145
 differences, 43, 46, 48, 53
 patterns, 26
 policy, 144
 practices, 28, 29, 79, 95, 116, 117, 141
 trends, 24, 31
 variation, 23, 41, 115, 144
 unbiased, 81
- Sex, 40, 41, 43, 48
- Shafer Commission, 4, 5
- Socioeconomic status, 108, 109
- (Special) Senate Committee, 1, 18
- Stigma, 72, 73, 109
 legal, 69, 147
- Students, 109
 college, 88
 high school, 2, 88
 university, 89, 90
- Summons, 55
- T
- Trafficker, 18
- Trafficking, 12, 19, 23, 26, 28, 29, 70, 72,
 120, 124, 129, 130
- Treatment, 1, 18, 19, 82
 facilities, 1
- Trial, 45, 78, 86, 91, 102, 109, 110, 112,
 124, 125, 132
- U
- Unemployment, 111, 134, 140, 141
- United States, 2, 4, 13, 18, 31, 58, 87, 90,
 120, 146

V

Violence, 63, 79

W

Warrants, 1, 13, 18, 24, 55, 56

Writ of assistance, 13, 18, 24, 29

Y

Youth, 4, 24, 58, 90, 128, 141, 146

middleclass, 2, 58

as users

of hallucinogens, 19

of marijuana, 19

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159

21

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1
2
3
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